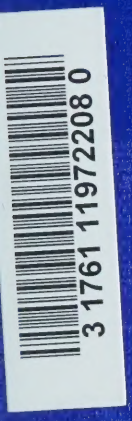


The Commission of Inquiry
Concerning Certain Activities of the
Royal Canadian Mounted Police

Parliament and Security Matters

A Study prepared for the Commission

by

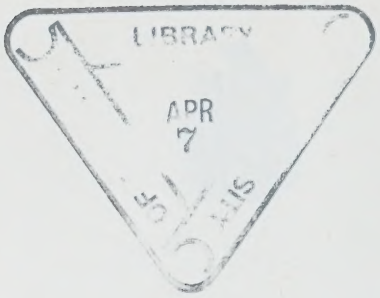
C.E.S. Franks

PARLIAMENT
AND
SECURITY MATTERS

PARLIAMENT AND SECURITY MATTERS

C. E. S. Franks
Queen's University

January, 1979



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A Note by the Commissioners

An important part of the terms of reference of our Commission of Inquiry (P.C. 1977-1911) reads as follows:

(a) to advise and make such report as the Commissioners deem necessary and desirable in the interest of Canada, regarding the policies and procedures governing the activities of the R.C.M.P. in the discharge of its responsibility to protect the security of Canada, the means to implement such policies and procedures, as well as the adequacy of the laws of Canada as they apply to such policies and procedures, having regard to the needs of the security of Canada.

Professor Frank's study discusses many important issues that have a bearing on this aspect of our terms of reference Indeed, while the opinions he expresses are his own and not necessarily those of the Commission or of the Government of Canada, we hope that his paper will provoke and stimulate the reader to express his or her own considered views to the Commission by writing to it at:

P.O. Box 1982
Station B
Ottawa, Ontario
K1P 5R5

Mr. Justice D.C. McDonald (Chairman)

D.S. Rickerd, Q.C.

G. Gilbert, Q.C.

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Preface

This report has been prepared for the Commission of Inquiry Concerning Certain Activities of the Royal Canadian Mounted Police. It has been written independently by the author, and the views and remarks contained therein are his own, and do not necessarily reflect those of the Government of Canada or the Commission.

The report is divided into four sections. The first section defines the issues and problems in parliamentary control and supervision of security matters. The second describes the present components of parliamentary control of these matters, and the third discusses some cases of parliamentary handling of security problems. A final section contains conclusions and recommendations. No general studies of the role and practices of Parliament in security matters now exist in the popular or academic literature. Consequently, a substantial amount of empirical research had to be done for this study. The terms of reference set by the Commisson have excluded three types of data: first, Members of Parliament have not been interviewed; secondly, the author has had no access to confidential government or commission data; and thirdly, quantitative survey techniques of studying the parliamentary record and participation of members have not been used. Parliamentary records, from 1966 to 1978, are the main source of data for the study.

THE ROLE OF PARLIAMENT IN SECURITY MATTERS

I. Definition of the Issues

The *Official Secrets Act*, in one of its key clauses, describes as offences acts which are "prejudicial to the safety or interests of the State".[1] In using the term "State", and protecting the safety and interests of the state, the Act hearkens back to the centuries old doctrine of "reason of state". There is no need to go into details on the origins, development and use of this doctrine; in rough outline, reason of state embodies the principle that the ultimate law is the safety of the state, and that the survival and efficacy of the system of law and law enforcement is of paramount importance, and overrides other considerations, including specific provisions of the law itself and the rights of individuals.[2] In effect, there are no limits to what the state ought to do to ensure its survival when threatened by war, subversion, invasion, insurrection or terrorism. Its necessity knows no law. The existence of emergency powers of government overruling normal legal and administrative constraints, which is recognized either explicitly or implicitly in virtually every constitution, emphasizes the continuing strength and validity of the doctrine of reason of state. And as long as countries are threatened by other countries, by terrorism, rebellion, or other emergencies, it will continue to have force.

If the doctrine of reason of state established an absolute and overriding priority and right to government at all times and all places, there would be no problem: whatever the state did to preserve itself would be legal and acceptable, regardless of the affronts given to civil liberties and democratic processes. But in modern liberal democracies like Canada, the government as well as the people is expected to live under and within the law. The powers and the rights of government are described and limited by the legal and constitutional framework. The rights of the people include freedom of speech and assembly, freedom from arbitrary arrest and detention, rights to a fair trial, rights to privacy, and in general the right to go about public and private business without interference or control by the state. Our system is one of rule of law. In combatting subversion, terrorism, or other threats to the state, the police, military, security forces, and other branches of government ought, in liberal democratic constitutional theory, to be limited by the law of the land.

One problem emerges when the measures that the government considers it must take in security activities stretch or exceed the law. As a Canadian commission on security (The Mackenzie Commission) pointed out: "A security

service will inevitably be involved in actions that may contravene the spirit if not the letter of the law, and with clandestine and other activities which may sometimes seem to infringe on individuals' rights."[3] A second problem arises because conspirators against the state, perpetrating terrorism, espionage, subversion and insurrection, act in extreme secrecy, and the government's countermeasures including intelligence activities to discover and define the threats, and actions to counter the threats, must also usually be conducted in secrecy. Thus there are two problems in the control of security activities: first, they are likely to impinge on the civil rights of some groups and individuals; and secondly, they are likely, by their nature, to be secret.

Parliament is the main forum in which the government of Canada is called to account for its policies and administration, and an essential component of parliamentary control is publicity and the resulting "influence of public opinion, direct or indirect. Secrecy breeds prodigality, oppression and, if not injustice, at least a sense of injustice. Publicity is the safeguard of popular liberties...".[4] There is obviously a conflict between the need for secrecy in security operations and the need of publicity to ensure parliamentary control.

Liberal democratic theory does not offer much useful advice on how Parliament should call the government to account over these sorts of activities which must, by their nature, be secret. Quite the opposite, theory asserts that the essence of liberal democracy is free and open discussion, and belief that the basic rationality of human beings will, through public political discussion, produce reasonable and useful answers. The darker side of political life, such as terrorism and threats to the democratic order, and countering activities justified by 'reason of state', have not been considered in depth by liberal democratic theorists. Locke, for example, argued on the one hand that "the good of society requires that several things should be left to the discretion of him that has the executive power", and defines prerogative as "this power to act according to discretion for the public good, without the prescription of the law and sometimes even against it."[5] This prerogative power is to be used in emergencies threatening the survival of the community. On the other hand, Locke also argued that natural law is so strong that rulers and ruled alike must be subjected to it: "whosoever in authority exceeds the power given him by the law, and makes use of the force he has under his command to compass that upon the subject which the law allows not, ceases in that to be a magistrate, and acting without authority may be opposed, as any other man who by force invades the right of another."[6] Constitutional and legal theorists in the Anglo-Saxon countries have tended to ignore and reject the argument in Locke's first statement, on prerogative, and accept the second, on law. Thus, in examining the role of Parliament in security matters, we are entering new and difficult waters, where there is the possibility of serious conflict between the ancient, pessimistic doctrine of reason of state, and the emphasis on rule of law of liberal democracy.

A system for parliamentary oversight of security activities will have as its foundation the legal framework within which they are performed, and a chain

of accountability and responsibility which ultimately culminates in a person, persons, or organization being accountable and responsible to Parliament for the activities. Finally will be the procedures and instruments by which Parliament attempts to make this accountability effective. The various possible legal frameworks for control can be classified into four: closed season; open season; poaching; and hunting and fishing licences.

Closed Season. Under a 'closed season' legal framework, a security service would have no powers, privileges or authority other than those granted the normal police and government authorities. Like any other government agency, or any citizen, the security service would be expected to obey and operate within the law. If they break the law in their work, they would be punished as would any other lawbreaker. A closed season framework assumes that threats to the state are such that the activities involved in identifying and counteracting them do not require any extraordinary powers, that terrorism, espionage and subversion are infrequent and low level threats which normal police and administrative powers are quite sufficient to handle. For most of our history, Canada has had a closed season regime for security activities, and for most of the time this normal legal framework, with its recognition of civil and legal rights, has given adequate powers to the security services.

Open Season. Under an 'open season' legal framework, the security service would have extraordinary powers. They would not need to operate under the normal law of the land, and the legal and civil rights of citizens would not have power against the security service. What would be crimes if perpetrated by other citizens, or by other police or government agencies, such as unlawful trespassing, arbitrary arrest, imprisonment without trial, torture, suppression of free speech, special courts, and so on, would be permitted in security activities. Under an open season regime, the ultimate law truly becomes the safety of the state. The term "Police State" is commonly used to describe a regime in which the security service operates with the powers of an open season. Police states, including many fascist and communist regimes, or many of the dictatorships allied with the west, are not unusual forms of government. The Canadian War Measures Act* which was passed by Parliament in 1914, permits the Canadian government to make what laws it considers necessary for handling an emergency, and also permits the government to establish special courts for enforcing these regulations. It is potentially so broad in scope as to create a police state. It has been invoked three times: during the First World War; the Second World War; and the crisis of October, 1970. It has been used to authorize arbitrary arrest and detention, depriving citizens of their property, control over assembly and freedom of speech, and many other transgressions of civil rights. The defence for an open season, in Canada as elsewhere, is the need to preserve the state. In a liberal democracy only the justification of an extraordinary and grave crisis such as total war can justify an open season. If a scurity service, in peacetime, needs these sorts of extraordinary powers, or even only some of them, the threats to the state should have to be equally extraordinary.

* RSC (1970), c.288.

Poaching. It is possible, as the Mackenzie Commission noted, that a security service which formally operates under the law in a closed season framework, will find it necessary to break the law. Such actions might include surreptitious entry, illegal opening of mail, the provision of false identities and, in grave emergencies, more extreme measures. A conflict can then emerge between the requirement that the security service respect the law, and the need for the service to be effective. The security service can then, as appears to have happened in Canada, be placed in the position of considering it necessary for it to break the law in order to preserve it, or of becoming a gamekeeper turned poacher. It is even conceivable that a government could tell its security service to poach: "Your instructions are to get those villains. If you have to break the law to do it, don't tell us. That's your problem, not ours. But get them!" Poaching implies that important agencies of government will knowingly break the law. It also implies that officers of the crown whose responsibility is to uphold the law will, through silence or willing ignorance (or what the Americans call plausible deniability) condone these transgressions. Poaching is not a happy state of affairs. This approach destroys the principle a Minister of Justice described as "fundamental to the operation of the rule of law and the protection of our civil liberties that all people in a country, whether they hold public office or not, whether they be civilian or be policeman — that they operate under and within the law."[7]

Hunting and Fishing Licences. There are many possible configurations for a legal framework between the confines of a closed season and the unlimited discretion of an open season. A security service could operate under a special law which gives it the authority to perform a limited set of acts which would otherwise be illegal. This creates the problem of how to limit and control these acts. A logical control is to require the security service to obtain a 'hunting or fishing licence', which will authorize the act. Such permission is already required when wiretaps are installed for purposes of national security. An effective system of hunting and fishing licences requires first a clear legal description of the kinds of activities permitted and the circumstances and purposes for which they will be authorized; secondly, a statement of who can issue the licences, judge, director of security services, or responsible minister; and thirdly, a technique for reviewing the issuing and use of the licence to ensure that these are in fact limited and controlled.

This paper will not consider what extraordinary powers might be required by the Canadian security service, or whether any extraordinary powers are needed at all. These are questions of fact and judgment which can only be answered after a close examination of the likely and existing threats to the state, and the countermeasures necessary in Canada. It is important to point out, however, that the security services in Canada have found, for necessity or other reasons, that they have had to poach, and that this poaching, with the deliberate evasion, misleading statements and lies, disrespect for the law on the part of those whose job is to preserve it, and consequent breakdown in accountability and responsibility, have led to the present problems and study by the Commission of Inquiry. A better legal framework and system of control is needed. An open season regime is so destructive to basic civil rights that it

can also be rejected for normal peacetime purposes. The closed season, or hunting and fishing licences remain. Each of these poses similar problems in ensuring accountability and control of activities which must often be secret, and require the careful exercise of discretion at all levels. The bulk of this paper will study in detail the parliamentary aspects of these problems, the experience of Canada in attempting to cope with them, and possible approaches for improvement. Before doing this, however, the question of what constitutes a threat to the state will be examined.

Threats to the State

If Parliament or any other body is to provide clear limits and guidelines for security activities, they must be clear on what subversion is, and what can legitimately be termed threats to the state. The key issue is the meaning of "state". The *Official Secrets Act* does not define what is meant by "the state', even though it is a crucial word in the act. Nor does political science contain a clear definition of "the state"; rather the word is used in many different ways, with conflicting and overlapping meanings. Three meanings are important in security activities. The first of these uses of "state" is to describe an organized political community under one government, including its society and citizens, such as the nation states of France, Great Britain, or Canada. The second use is a narrow, liberal democratic one which describes the system of government within a country in a restricted traditional sense of the executive, legislative and judicial institutions or, even more restrictively, the processes for making and executing authoritative decisions. The third use includes the elements of the second, but adds to them the interwoven elements of social and economic, as well as political power. For example, persons on both the left and the right of the political spectrum have argued that liberal democracy only has meaning when it is conjoined with strong institutions of private property and a market economy, and that both the political and economic forms must be present for the liberal democratic state to exist. They then proceed, of course, to draw opposite operating principles from the same observations. These three uses and others exist together at the present and, when politicians, legislators, professors, civil servants or judges talk of "the state", it is often not clear which sense is meant. The Mackenzie Commission did nothing for clarification when it, in attempting to define subversion, said that "subversive organizations or individuals usually constitute a threat to the fundamental nature of the state or the stability of society in its broadest sense, and make use of means which the majority would regard as undemocratic."[8]

Obviously, however, what is deemed to constitute a threat to the safety of the state will vary substantially depending on which meaning of "the state" is chosen. The first definition of the state as the organized political community is useful in defining external threats such as attacks by foreign powers. The "state" is then synonymous with territorial integrity of the nation-state. With diminished clarity, this definition can also be used to identify foreign-supported activities which are real or potential threats to the state, such as sabotage, aid to rebels, or espionage. There will, however, inevitably be a hazy boundary between legitimate foreign-supported activities directed towards

information gathering and promotion of national interests, and less legitimate military intelligence gathering and other nefarious activities.

But the real problems arise with internal threats to security. For the first definition does not distinguish between what is a threat to the political structure as opposed to what is a threat to the social structure, or a threat to one particular set of rulers, without being a threat to the system as a whole. Used in this broad sense, "the state" could mean, as well as the territory, society as a whole, or those parts of it involved (to use a modern definition) with "the authoritative allocation of value", which includes virtually every aspect of all the power structures in society. In its extreme, this interpretation could mean that any threat to any power structure is a threat to the state, and hence for reason of state can be countered by whatever means are necessary without regard to the legal or constitutional limitations. These broad uses of "the state' and reason of state are now operating principles for internal security in most countries of the world. Liberal constitutional democracies are the exceptions.

Liberal democratic theorists define "the state" in much more limited terms, as the system of government. This restricted definition of "the state" produces a much narrower range of legitimate reasons of state. The institutions of government are considered to be neutral instruments through which views and interests of individuals, organizations, and groups interact to emerge as public policy. Consequently, the liberal democratic state in narrow theory is not associated with any particular social or economic order, or any particular distribution of goods, power, and resources in society. Political argument and expression of views, almost regardless of the content of the discussion, and the ends proposed, cannot in itself in normal circumstances be a threat, for a liberal democracy is open-ended, and questioning of values and goals is an essential part of political discussion. Threats to the safety of the state are limited to direct threats to the central institutions of government, such as rebellion and terrorism, rather than the open expression of views and ideologies which run against prevailing standards. Seditious libel is applicable only to the most extreme expressions of rebellious intent. The liberal democratic state is not an end in itself but a means to other ends. Even the territorial integrity of the state is not an ultimate good, as the Mackenzie Commission noted: "Separatism in Quebec, if it commits no illegalities and appears to seek its end by legal and democratic means, must be regarded as a political movement, to be dealt with in a political rather than a security context."[9] Similarly, left wing movements and anti-establishment dissent of an "opting out" or hippie style, providing they operate within the democratic processes, are not threats to the state in themselves, however obnoxious the participants and views expressed may appear, any more than in themselves are right wing and fascist political argument. Even civil disobedience, in which the law is deliberately and publicly broken for limited ends, is not a threat to the state.

But as the Mackenzie Commission noted: "...if there is any evidence of an intention to engage in subversive or seditious activities, or if there is any suggestion of foreign influence, it seems to us inescapable that the federal

government has a clear duty to take such security measures as are necessary to protect the integrity of the federation. At the very least it must take adequate steps to inform itself of any such threats, and to collect full information about the intentions and capabilities of individuals or movements whose object is to destroy the federation by subversive or seditious methods."[10] The necessary security activities can interfere with the freedom of individuals. They can also interfere with the essential democratic processes of open discussion because they involve surveillance of political meetings and activities, and infiltration of political organizations or gatherings of information by clandestine means. Thus the activities of identifying and forestalling threats to the state, or of getting adequate information to distinguish between appropriate targets and harmless activities, will involve the liberal-democratic state in activities which not only are potentially disruptive of free political processes, but also involve investigation of a much broader spectrum of potential targets than the narrower definition of "the state" would suggest.

The danger to civil liberties in police surveillance of political activities and organizations are obvious and include the possibility of the intimidation of persons simply by the citizen's awareness of surveillance, the inhibition of freedom of expression, the potential for abuse and misuse of information on individuals and organizations; infiltration of and consequent influencing of organizations; the use of discretionary police powers to inhibit individuals from political activities, and so on. This danger has been aggravated in recent decades by the tremendous growth in political violence, terrorism, and other harmful forms of political expression. But even though the need for security activities is obvious, it must be constantly remembered that security activities will always impair the ability of some groups to act politically, and that this impairment of action, regardless of whether the activity in question is legitimate or illegitimate, will inevitably create its own justification, in dissident groups, for the conclusion that their political ends cannot be attained through peaceful, open, means. This, in turn, can make the threats to the safety of the state much more real and imminent. Pervasive harm can be caused to a political system by the systematic exclusion from open politics of grievances, as is attested to by the problems of the Metis in the west in the nineteenth century, and the two attendant rebellions, or the diminishment of violence in Quebec with the emergence of a legitimate separatist party. As Hannah Arendt has remarked, power and violence are opposites, and violence emerges when power is in jeopardy, when, for example, a substantial group in a state no longer accept political authority as legitimate.[11] There is consequently a pervasive and urgent need to encourage open public expression of grievances and opinions, however upsetting they are, and to limit security activities to the necessary minimum so that they do not lend justification to the sense of powerlessness and alienation of the dissidents.

The restricted, liberal-democratic concept of "the state" demands sensitive intellectual perception to distinguish a threat to the safety of the state from a threat to the existing social and economic order, and it is not surprising that in both theory and practice the distinction is often blurred and confused. In practice, therefore, security services, including the Canadian, often appear to

act as though "the state" included social and economic structures, and threats to the latter were also threats to the former. The general population similarly makes more of an identification of existing social and economic order with political order than liberal democratic theory proposes. There are many good reasons for this. As well as the difficulty in making such an intellectually complex distinction, there is the real problem that political movements which want to change the social and economic order (or to separate) emerge from grave discontents with the existing system, and it often is similar people motivated by the same complaints that participate in terrorism and subversion. Many political radicals, like Vallières,[12] move from one to the other form of activity in their careers. Further, criticism of the existing order by radical groups, whether it is directed to political, social, or economic institutions, produces nervousness in the general populace and in officials and politicians, which can lead to demands for countervailing action regardless of its legitimacy, a tendency which is exacerbated in times of war, or other conditions of insecurity.

Therefore in practice security services often adopt a third meaning of "the state" and lump threats to political order, economic order, and social order all together as threats to the state. This position is frequently accepted by both the far left and the far right, with the far left drawing from it that in order to reform social and economic order, the political order must be overthrown, and the far right drawing the conclusion that political dissent and discussion must be kept within narrow limits. The dangers of this position are obvious: the more grievances, real or imagined, are not allowed free and open discussion and consideration, the more justifiable to dissidents the argument that force and violence are the only ways to get redress of grievance, and the greater the need for a strong security service, unrestricted by the limits of civil rights, to control dissent and political discussion. In addition, the less is the likelihood of the grievances being redressed. The virtue of the position is the strength of the security of knowing that the state is the proponent and preserver of economic, social and political stability and order, which, especially in times of turmoil, uncertainty and trouble, is not a negligible contribution.

The Parliament of Canada attempted to clarify some of these issues in an amendment to the Official Secrets Act passed as part of the *Protection of Privacy Act*[13] (wiretapping) in 1973. The new act authorized the interception or seizure of communication "for the prevention or detection of subversive activity directed against Canada or detrimental to the security of Canada, or ... for the purpose of gathering foreign intelligence information essential to the security of Canada." The amendment, which was introduced by the government in committee after criticism on second reading, defines subversive activity as:

(a) espionage or sabotage;

(b) foreign intelligence activities directed toward gathering intelligence information related to Canada;

(c) activities directed toward accomplishing governmental change within Canada or elsewhere by force or violence, or by any criminal means;

(d) activities by a foreign power directed toward actual or potential attack or other hostile acts against Canada; or

(e) activities of a foreign terrorist group directed toward the commission of terrorist acts in or against Canada.[14]

It is all to the good to have this more detailed definition, but it by no means eliminates the problem. The general phrase, "the security of Canada", suffers from similar ambiguity as the earlier "safety or interests of the state". Does "Canada" include provincial governments, or the Canadian federation? Some further problems are: in section (b), what distinguishes a subversive intelligence activity from the legal purchase of maps, data etc., and the commissioning of research, as were at issue in the Spencer case which gave rise to the Mackenzie Commission?; does section (c) prevent any political refugees in Canada, whether of the left or right, from trying to restore a wrongfully deposed government?; what is meant by "governmental change" in section (c)? Does it mean deposing a government, or changing a policy of a government? Violence can be directed against a policy or an institution without being directed against a government (as in a prison riot), and is often very effective in accomplishing limited ends; or violence can be directed generally against a system without a specific goal of overthrowing a regime, or changing a policy.[15] What is meant by "force or violence" in section (c)? These terms have proven to be extremely difficult to define in political analysis;[16] and, finally, the definition does not answer the problem of the limits to the role of the state in intelligence work in security matters, when it is attempting to discover possible future subversive activity. It would be surprising if the inclusion of this definition of subversive activity has done much to modify or restrict the activities of the Canadian security service.

Present problems of confederation, and perhaps even more so problems of economic disparity and pessimism about the future, are causing persons to question the political and economic structure of Canadian society. Over the next few years a crucial issue will be how to permit both discussion and change, but at the same time keep discussion and the processes of change within the limits of human rights and civil liberties. To do this, Parliament, the public and the security services, will have to be able to distinguish clearly between activities which pose threats to the state, and those which are legitimate expressions critical of existing institutions, structures, and social and economic order. This is not well done by present laws, any more than are the powers and restrictions of the security service adequately defined.

II. The Canadian Parliament

The Role of Parliament

The functions of Parliament can be described as: first, to make a government, that is to establish a legitimate government through the electoral process; secondly, to make a government work, that is to give the government the tools necessary for governing the country; thirdly, to make a government behave, that is to be a watchdog over the government; and fourthly, to make an alternative government, that is to enable an opposition party to present its case to the public and become a credible choice for replacing the government party. Parliamentary activities of policy-making and legislating are largely aspects of the second function, and Parliament's role in them is not now, nor has it ever been, the dominant one. Rather, they are executive dominated actions, and the role of Parliament has been largely an intelligence activity of bringing problems to the attention of government and demanding action on them, and the scrutiny of proposed government policies through criticism of legislation and budgets, usually with little resultant change. The chief impact of Parliament on legislation is usually a deterrent one, which has been described as the law of anticipated reactions: the government attempts to avoid parliamentary criticism by covering all points during the preparation of legislation.

The functions of Parliament do not form a unified harmonious whole. The driving force in making the government behave is the opposition, which is motivated by its desire to establish itself as a viable alternative by proving the government party incompetent and itself the better. At the same time, the laws passed by Parliament are laws of the entire Parliament for the entire country, not just for the governing party, and one of the main results of the lengthy parliamentary process is that the opportunities for discussion, amendments and delay it provides ensures a fair hearing to all parties, and hence mobilizes consent (or at least acquiescence) for the programmes and policies of the government. Parliament also has an interest of its own in asserting its independence from government, and its collective responsibility and ability to watch and control the government; and although the government backbenchers are rarely seen to do this in public, they are often active in private, in caucus, and in committees. There is, consequently, a possibility of conflict between the interests of Parliament as an institution, in face of the government, and the interests of the two sides of the house in partisan warfare.

In the Canadian House of Commons this conflict has been not only theoretical but real. Its deliberations, especially during the 1960s, were marked by extreme partisanship; this bitter partisanship weakened the effectiveness of Parliament and damaged its credibility. The oppositions, both Liberal and Conservative, ignored the more general parliamentary functions and empha-

sized partisanship, bloody-mindedness and obstruction of government business. The legislative process in Canada still is marked by excessively long debates and extensive delays between the introduction and passage of bills.[1] In fact, the length of time spent on the average piece of government legislation has increased during recent decades. These difficulties have led the government to by-pass Parliament by not asking for legislation when legislation was desirable to cover activities, by including broad enabling clauses in legislation so that details and future amendments can be made by order-in-council rather than requiring parliamentary approval, and by delaying amendments to existing legislation until a large enough package was ready to make the process worthwhile. If the rules of relevance were strictly enforced by the speaker, debates on legislation would be much shorter. But Parliament's use of time is a core component of the struggle between opposition and government, and the opposition is strongly resistant to proposals for change. The Canadian House contrasts strongly with the British, where much less time is spent debating each piece of government legislation, and the parliamentary use of time is rigorously controlled by the government. The problems in time-tabling force the Canadian government, when considering new legislation on matters of security, to rank these very contentious subjects with other urgent and often less contentious government business, and this in part explains why Parliament has not considered more security matters. Prime Minister Trudeau, on one of the numerous occasions on which he was asked for a debate on the Mackenzie Commission report, replied that the session was becoming too long and:

> ... the government, of course, is not able to allot time in a definitive way. My answer ... is that if the opposition will help us try to set a reasonable time for debate on each piece of legislation on policy that was mentioned in the Speech from the Throne, we will guarantee to cover all subjects.[2]

There were, doubtless, other reasons as well why the government was not particularly interested in having a debate on security matters at that time, but the constraints of the parliamentary timetable must have been an important factor. The Canadian opposition rarely puts itself in the position of the government and lends its support to the government in doing what the opposition too would be forced to do if it were in power. No legislative proposals introduced into Parliament are without faults or critics; each represents the efforts of the government to reconcile the conflicting demands placed on it, and to form part of a coherent programme. The members of the government side are muted in their criticism of individual proposals by their general responsibility to the governing party. Some members of the opposition can always find fault with proposals, and in recent years they have expressed their criticism to excess, often without the party as a whole considering whether it in general supports the proposals.

These tendencies arise in part because of the extreme imbalance between government and opposition. Canada, except for a period after 1896, has not had an effective two party system. Rather, there has been a dominant, long-lived government party and one, or several, much weaker opposition parties. Changes of government come rarely, and for most of its existence the opposition has few members with experience in government, little real prospect of

forming the government, and a marked lack of sympathy with the problems of government. Up until the present, this contrast has been further marked because the governing party has normally had its power base in a coalition of interests of the two large and wealthy provinces of Ontario and Quebec, while the opposition has tended to represent the less-favoured and more remote regions of the country. In comparison with the government, it suffers in terms of recruitment and retention of effective members, contacts with the wide range of influential interests in the country, and in organizational and financial resources. The federal nature of the party system to some extent compensates for these weaknesses, as the opposition is often in power in some provinces. The vast gap in experience, knowledge, and future prospects between government and opposition does, however, reduce the common ground between them and reduce the likelihood of the two sides recognizing the need for working together on behalf of Parliament with an independent interest in confronting the government, or on behalf of "the state" in face of vexing and important problems, including those of security.

Minority governments have emerged from five of the last eight elections. It might be thought that the imbalance between opposition and government would be redressed in a minority government and that Parliament would take a much more active role in formulating policy. With some exceptions this has not occurred, however. One of the important exceptions was the wiretapping (Protection of Privacy) legislation considered in 1972-4.[3] The bill was substantially changed in committee. The Senate, where the government had a majority, restored the original principles of the legislation. The House of Commons, in an unusual confrontation with the Senate, refused to accept the amendments proposed by the upper chamber, and both government and Senate backed down, and the final legislation reflects the amendments made in the Committee on Justice and Legal Affairs of the House of Commons.[4] More usually, in a minority parliament the government's legislation is passed with little more change than in a majority parliament. In a minority situation, however, a government is especially concerned to avoid controversy, and in its legislative programme is extremely sensitive to the mood of the house and the need for support from some opposition parties. This diminishes the chances of important but contentious legislation with no immediate urgency, such as reforms to security legislation, being considered.

The disparity in power and resources between government and opposition reflects the overwhelming importance of the executive branch in Canada. At both the federal and provincial level our parliaments are weaker in face of the executive than is the British. Our political parties are more centered around the parliamentary parties, and have less participation and influence by membership, and our interest groups are less well-organized and influential than in most western liberal democracies. In part this derives from our pioneer origins: government came first, and society second, in most of Canada. There were tremendous needs for government services in Canada's difficult environment, and the origins of the country are so recent for these influences still to be pronounced. Mrs. Torrance, in a historical study of the response of Canadian governments to violence, concluded that this dominance of the executive has

affected the handling of violence and threats to the safety of the state in Canada:

> ... Canadian governments have been only too willing to invest incidents of violence with their attention. This can be seen by the central role played by the Prime Minister in each of the five incidents, in the speed of the government's responses, and in the expressions of anxiety and concern government members have used to describe their reactions to the incidents. Such concern would seem to stem in part from an assessment of the incidents emphasizing their potential for further conflict, almost as if members of the government saw themselves trying to police a hockey game with no "first off the bench" rule. Adding to the concern would seem to be a conception of government which stresses the maintenance of law and order as a prime governmental function. This conception would make of intervention a moral obligation, and may have led to a perception of other authorities being dilatory and needing to be supplanted.[5]

Mrs. Torrance further argues that the Canadian executive has unjustly felt that local authorities were not adequately handling threats of violence, has acted in an elitist manner, and has ignored the "depths of discontent behind the violence",[6] all of which further imply a dominance of the executive over other parts of the polity.

In the past fifteen years, the House of Commons has undergone many reforms, including enhancing and making independent the position of the Speaker, granting of research funds to the parties, improvements to the committee system, and the televising of Parliament. These changes have helped to redress the balance between Parliament and government, but in view of the great expansion of government activities, and the resources available to the government, the changes are not much more than a drop in the bucket.

In the post-second world war period, federal-provincial relations have become an important part of Canadian politics, and to some extent federal-provincial politics have supplanted parliamentary politics as a focus of interest. Two characteristics of federal-provincial relations are significant. First, they are conducted on an executive to executive basis, and their results are laid before federal and provincial parliaments as treaties to be ratified rather than as proposals to be debated and changed. Canadian parliaments have had little success in establishing committees to oversee federal-provincial relations, and are normally left in the background. Secondly, the main content of federal-provincial relations is often jurisdiction and the distribution of power, rather than the uses to which power will be put: over structure rather than means; form rather than content. It is possible that this lack of content contributes to the general impoverishment of political discussion in Canada and Parliament. In the federal-provincial struggle, parties on both sides of a house at either level tend to find themselves united in a struggle for their powers and legitimacy, without close attention to the worthwhileness of the policies. Some of the weaknesses in Canadian parliaments are doubtless caused by the competing strength of federal-provincial negotiations.

With the growth of government activities, especially during the post-second world war period, the role of Parliament has changed. Increased busi-

ness has meant that where being a member of Parliament had been a part-time occupation, demanding a few months' work a year, it is now a full-time and extremely demanding job. Since the early 1960's, the Canadian Parliament has sat about as many days a year (160-180) as it is reasonable to expect, and both government and opposition have been faced with the problem of how to make best use of this limited resource of time. This important political issue, which is a key to relationships between Parliament and government, has not yet been resolved, but whether it is resolved or not, it is not now possible for the federal Parliament, within a session or even between elections, to discuss all activities of government and to cover adequately all issues. Parliament must pick and choose what it deals with, and what it chooses will depend on what is raised in the media, the interests of members, of parties, and of the government. The government will be motivated by their political concerns and the needs of the executive branch; the opposition by their perception of weaknesses and their desire to show fault in the government; and private members by the kinds of concerns that affect 264 persons representing all the regions and people of Canada. It is natural in these complicated processes of determining how Parliament uses its time, that some worthwhile topics are ignored, while other topics are flogged to death.

Discussion in the House of Commons also tends to miss many issues of substance and deep significance, and the opposition has a strong tendency to pick on scandal-oriented and often superficial questions. Professor Mallory has noted with some concern that on what was probably the first opportunity in twenty years to discuss the workings of the modern cabinet system, the House failed to elicit much that was useful on the workings of the executive:

> ... in the adversary confrontation on the floor of the House, psychological issues may be more important than substantive ones. If it turns out that a prime minister is touchy about criticisms of his life style and manner of doing business, it follows that there will be floods of questions about chandeliers, the swimming pool, and his way of working with his senior advisers. If he finds this attention unwelcome, outrageous, and unfair, and seeks to give as good as he gets, he falls into the trap and the issues become greatly enlarged. Not everyone has a hide thick enough to ignore such matters, and few possess a capacity to confuse issues and turn tables in the grand Diefenbaker manner.
>
> All this contributes to the schoolboyish temper of the House and tends to enhance its bear-pit characteristics. Parliamentary politics is a game played by hardened professionals who like to win. If they can get away with the equivalent of the bean-ball and the butt-end in the corners, they will do so. And few votes are likely to be garnered by discussing the machinery of government.[7]

Most of the discussion of security matters in the House has been stimulated by scandal-hunting and suggestions of impropriety. It should be added that even though the opposition has such a pronounced predilection for detailed discussion of foibles, there is little evidence that scandal-hunting as such has much effect on the voters.

In the process of interaction between government and governed, parliamentary discussion is only the tip of the iceberg in an enormous, complex and extended dialogue, some of which is public, some private. The mass media are an essential part of this extended parliamentary process, and discussion in the

media often precedes, as well as encourages, discussion in Parliament. Very few legislative proposals reach Parliament without having gone through a lengthy process of examination by the affected interest groups, various public and private agencies, and many other bodies. The government tries to forestall criticism and gain acceptance of proposals before they are introduced for debate in Parliament. Thus, there is some truth in describing what Parliament discusses as the failures of the government: where it has not correctly anticipated reactions; where it has not acted in time; has not consulted properly; has not been able to reconcile conflicting interests; or has not obtained consent to its proposals.

In matters of state, unlike most programmes of government, there is little communication between government and interest groups. In part this is because of secrecy. But in part also it is because matters of state do not have an organized clientele outside of government. There is little interest group involvement or public participation in the activities countering threats to the state. Civil liberty and right wing groups tend to be critics on the sidelines rather than participants. The subversive groups themselves are not normally represented in or by Parliament. Rather, security activities are almost exclusively an executive function, and by their nature the circle of control even within the executive is small. Because of this, the likelihood of effective contacts of individual members of Parliament, or of opposition parties, with persons and groups involved in security matters, is far less than with normal programmes. This is not only true for Parliament in relation to security agents, but also in relation to persons and groups against whom security activities are directed and who, because of their roots in dissent against the system, are not likely to have close contact with members of Parliament.

Parliament does not have an easy task in security matters. The nature of these activities as "matters of state" secludes them within the executive far from parliament's view. The government is not eager to bring security issues before Parliament and, even if it did, there is a risk of discussion becoming more oriented towards the sensational than towards substance. And parliament is further handicapped because of the absence of resources outside the executive on which it can draw to make a searching and effective inquiry.

Parliament as a Watchdog

Ours is a system of responsible government, but the meaning of the concept of responsibility to Parliament has changed over time, and in so changing has lost some clarity. In its historical origins, ministerial responsibility to Parliament meant the individual accountability of each minister to Parliament for the policies of his department and the activities of the civil servants in it. This doctrine in Britain pre-dates the development of cabinet government and rigid party lines, and there are many instances on record of Parliament impeaching individual ministers or forcing them to resign without the cabinet being affected. Similarly, there are many instances, after the development of the cabinet, of individual ministers retaining a portfolio when the cabinet resigned and Prime Ministers changed.

The Solicitor General is now the minister responsible for the Royal Canadian Mounted Police, and the security service which is part of it. Though the office is a historic one, it had normally been of little importance in Canada until 1966, when responsibility for the RCMP was transferred to it from the Minister of Justice. The Solicitor General is now responsible for prisons, the parole service, and the RCMP. Out of a total budget of $840 million in 1977-8, $487 million was for the RCMP, and $340 million for correctional services. This specialized and narrow range of functions must inevitably restrict the range of advice and opinions available to the Solicitor General in his directing, controlling and planning activities. The RCMP in particular, with over 20,000 members, has been a strong and independent organization, and the security service has been further protected from external control by being concealed within the RCMP. Table I shows that Solicitors General have, since 1965 held the office for an average of two years. This is roughly comparable to ministers' tenure of office in other ministerial positions, except for the Prime Minister. Two years is not an adequate time for a minister to learn about a department's programmes, to develop new lines of policy, and to have them approved by cabinet and Parliament and implemented by the department. Consequently, for much of his tenure of office, a Solicitor General is either learning about the department, or preparing to leave it. He can, consequently, act as little more than spokesman for the department in Parliament and in public, in effect repeating what his employees have told him. This problem might well have been mitigated by ministers having been members of the appropriate cabinet committee before and after tenure of the office, but as the membership of cabinet committees is not divulged, this cannot be confirmed. The office of Solicitor General has not had great prestige, nor have its holders usually been among the most eminent in the cabinet. Both the RCMP and correctional services were with the Minister of Justice before 1966. He would have had a wider range of expertise and opinions available to him within his ministry than does the Solicitor General, and the office has been one of great prestige, but the Security Service was then an even smaller part of a very large and exacting ministerial portfolio.

TABLE I — THE SOLICITORS GENERAL OF CANADA, 1965-1978

7 July, 1965 — 19 April, 1968	L.G. Pennell
20 April, 1968 — 8 July, 1968	J. Turner
8 July, 1968 — 21 December, 1970	G.J. McIlraith
22 December, 1970 — 26 November, 1972	J.P. Goyer
27 November, 1972 — 14 September, 1976	W. Allmand
15 September, 1976 — 27 January, 1978	F. Fox
27 January, 1978 — 2 February, 1978	R. Basford (Acting)
2 February, 1978 —	J.J. Blais

Long after the development of the concept and practice of individual ministerial responsibility, the concept of collective cabinet responsibility emerged. In part it was a product of the extension of the franchise and the development of mass parties and rigid party lines. Collective cabinet responsibility means that the cabinet as a whole is responsible for the activities and

policies of government. In effect, it is a responsibility to the electorate, which supports or defeats the government in elections, rather than to Parliament, which rarely defeats cabinets, and never impeaches them. Parliament is the central forum in a continuing election campaign in which the parties struggle for electoral support. The cabinet usually wins in Parliament, and for that matter in elections as well. In practice, the doctrines of individual and collective responsibility can conflict, for the cabinet can declare virtually any item of parliamentary and individual ministerial business a matter of confidence, with the attendant option of appeal beyond Parliament to the electorate. Canada has not refined the theory or practice of individual ministerial accountability, and there are many more precedents in Canada of ministers, when faults have been discovered in their departments, not resigning, and of acknowledging error by civil servants without acknowledging culpability or the need for penitence on the part of the ministers themselves, than of the opposite. The electorate, in regularly maintaining governments in power, appears to accept this behaviour.[8]

Further, in Canada more so than in Britain, the practice has emerged on the side of the government for decisions to be taken collectively by the cabinet rather than individually by ministers. Thus, Orders-in-Council are a more common form of enacting decisions and subordinate legislation in Canada than are ministers' orders or regulations, while the opposite is true in England. The reasons for this are probably historical: first, in Canada the cabinet has been the forum in which the regions were represented and regional interests accommodated, and cabinet decisions embodied in orders-in-council were the logical instruments for such actions as government appointments, the awarding of contracts, and the allocation of resources; and secondly, there were in each cabinet only a few strong and experienced ministers, and these ministers participated in making important decisions, regardless of which department was concerned. This emphasis on collective responsibility has been accentuated with the development of the cabinet committee system and the consequent emphasis on group decision-making. Security activities are overseen by a cabinet committee in which the Prime Minister has a strong role, further confusing ministerial responsibility.

The responsibility of the Prime Minister in particular, as head of government and chairman of cabinet, is a political one to the electorate. Also, the Canadian Prime Minister personifies the collective responsibility of the cabinet. Prime Minister Pearson, during the debates on the Spencer issue (which led to the establishment of the Mackenzie and two other commissions on security, see below pp. 79-89), vividly expressed this:

> ... I as head of the government take the responsibility, the primary responsibility, for everything that has been done in this matter by the government. Any minister who has a particular responsibility acts only as a member of the government of which I am the head. Any action taken against the minister is naturally taken against the government and must be considered as such.[9]

Pearson emphasized that in security matters in particular, this general responsibility of the Prime Minister and the collective responsibility of the cabinet are important:

> ... the committee and the house have spent a good deal of time on this particular case. I think that is understandable and is right because it involves questions of national security, questions of the effectiveness in the past and the continued effectiveness in the future of our security arrangements for the protection of our state, and of our society against subversive action. This, of course, is the first duty of a government; certainly a first duty of government, and in particular of the head of a government....[10]

The Prime Minister, whether in question period or debate, appears at virtually all times as a political personage accountable to the electorate. He does not normally appear in the less partisan forum of the standing committees.[11] Insofar as the Prime Minister is responsible, the political importance of his role limits and colours the ability of Parliament to enforce accountability for security matters. Issues become all too public and political for effective examination by Parliament.

Collective and individual ministerial responsibility are the best-known types of responsibility to Parliament, but there are others. For example, both the Canadian Official Languages Commissioner, and the new Human Rights Commissioner, report directly to Parliament. The reports of the Official Languages Commissioner are tabled by the speaker. So far, they have not been debated by Parliament, nor have they been referred to a parliamentary committee. The Human Rights Commission has not yet reported. The Civil Service Commission after 1918 also reported directly to Parliament rather than through a minister. In practice, however, its effective dealings were with the Treasury Board and other executive agencies, and its accountability to and control by Parliament were nugatory. The problem was that because the Civil Service Commission had executive authority, it and the executive had to deal closely and directly with each other, and issues were resolved well beneath the level of parliamentary scrutiny. A similar problem also existed when the federal Auditor General and the various provincial auditors had a measure of control over the use of funds: they exercised their discretion before decisions were made, and reported usually that there were no problems. To report otherwise would have been to criticize their own decisions.[12] No Commission or other agency that exercises executive power can be immune to government influence and pressure. The Canadian Auditor General at present, and most of the provincial auditors, are in a changed role in which they have no executive authority, but report directly to Parliament on what they consider to be important and questionable in the government's use of funds. They consequently now make much more detailed and critical reports.

Another deviation from the pattern of ministerial responsibility which now exists in Britain and might well emerge in Canada, is that of making civil servants directly accountable to Parliament. In Britain, each department has an "accounting officer", usually the Permanent Secretary (deputy minister) who is directly accountable to Parliament, through the Public Accounts Committee, for the financial transactions of his department. The ministers

have no part either in financial administration or in accountability for it to Parliament. Perhaps this practice has not developed in Canada because many financial transactions, such as the awarding of contracts, have been highly partisan and political. Nevertheless, there is a good argument for making the bureaucrats responsible and accountable for financial transactions if financial administration is expected to be carried out according to bureaucratic standards.[13]

If accountability is examined from below, from the perspective of the civil servant rather than Parliament or ministers, a quite different pattern emerges. Professor Hodgetts of the Royal Commission on Financial Management and Accountability, noted that close to 100 per cent of civil servants said that they are responsible "in the last analysis to ourselves — to thine own self be true."[14] Civil servants can also have a sense of responsibility to their profession, and to their clientele which, in practice, can be more significant than responsibility through the ministers to Parliament. This responsibility to a concept or ideal beyond direct political control can be a particularly difficult issue in security matters, where the ideal and the instructions of political leaders can conflict. General MacArthur identified the issue, though not necessarily the solution, when, being 'fired' by President Truman in 1952, he said: "I find in existence a new and heretofore unknown and dangerous concept that the members of our armed forces owe primary allegiance or loyalty to those who temporarily exercise the authority of the Executive Branch of Government rather than to the country and its constitution which they are sworn to defend."[15] This problem can be acute in the United States, where the Supreme Court can support a dissenter and overrule Congress or the executive. If Canada had an entrenched bill of rights, it might well become a problem here also. The Nuremberg trials suggest that there are limits to the acceptability of the argument of obedience to lawful commands as a defence for immoral acts.[16]

There are many further difficulties with accountability. The extent to which civil servants are accountable to commissions like the Human Rights Commission is not clear. The caucus on the government side has a useful though hidden role in holding the government accountable. Both civil servants and ministers are to some extent accountable to the law (in Italy there is legal provision for forcing an attorney general to prosecute civil servants who have broken the law). The courts can be a problem in security cases: the Minister of Justice in the Spencer affair decided against prosecution in the courts first because the evidence was inadequate to obtain a conviction, and secondly, because court proceedings would compromise security procedures. The second of these objections was overcome in the case of Mr. Treu in 1978, by holding the trial *in camera*, but this created political problems for the government.

Parliament's ability to serve as a useful watchdog over security matters depends, as in other matters, on the effectiveness of the flow of information. The secrecy involved in matters of state greatly restricts this flow. Faced with a claim by the government that information must remain secret because it is 'not in the public (or national) interest' to reveal it (i.e. for reasons of state), Parlia-

ment has few tools, apart from persistent nagging, to cast doubt on the claim. Parliament cannot, for example, question civil servants to discover whether ministers are telling the truth, or are concealing information. Nor can Parliament or its committees obtain copies of reports or papers which a minister refuses to release. As long as it is in order, any answer, or none at all, is an acceptable ministerial response to a question, both on the floor of the House and in committees. With all these obstacles, it is difficult for Parliament to distinguish between a justified secrecy for worthwhile reasons of state, or less justifiable secrecy to avoid embarrassment to the government or bureaucracy, that is, for reasons of office.

In 1977 and 1978, two further problems handicapped Parliament in obtaining information on security activities. First, the issues that emerged dealt with problems and decisions of previous years, when different persons had held the office of Solicitor General. The Speaker ruled that previous incumbents were not responsible for answering on issues from their tenancy of office,[17] while the current Solicitor General, for his part, would not comment on issues raised by the Commission of Inquiry investigation into the actions of previous ministers.[18] Thus, Parliament was not able to obtain responses to questions about the crucial time period. In December, 1978, a question of privilege was considered over a letter sent and signed several years earlier by a Solicitor General which assured a member that the RCMP did not make a practice of opening mail. Later revelations had shown this assurance to be false. The Speaker ruled that the member had indeed been misled, and that there was a question of privilege. The Government side voted down a motion to have this studied by a committee, arguing that a commission of inquiry was already examining the issue. The Government further argued that the Solicitor General was not to blame for misleading the member, as the problem arose from within the RCMP.[19] The Government thus did not accept responsibility for tendering false information, and the House was not able to investigate this obvious, serious, breach of privilege.

In dealing with matters that must legitimately be kept secret for reasons of state, there is a dilemma in establishing a system of control. At some point secrecy must end and publicity begin, and at this juncture there must inevitably be a gap in knowledge and power 'to send for persons, papers and records' between the controllers and the controlled. If Parliament shares the secret knowledge, then the press and public must accept Parliament's viewpoint on trust; if Parliament is not privy to the secrets, then Parliament must accept some other person's conclusions on trust. There is little evidence in Canada that either Parliament or the public would accept Parliament as part of the inner circle of control, privy to the secrets of state.[20] This contrasts strongly with the United States, where some congressional committees, some senators and some congressmen are privy to many of the secrets of the state. In Britain, parliamentary committees meet *in camera* more frequently than Canadian, and they appear to be entrusted with slightly more confidential information than the Canadian.

In actual practice, the division between secret knowledge and public knowledge is not, on most issues, an absolute, sharp break. Not even the responsible minister and the cabinet will want to know, or should know, all the details of security activities, but they will want assurance that activities are being effectively carried out within the appropriate guidelines and constraints. Parliament wants the same assurance, and how it can obtain this without depending on trust in the government or through having complete access to persons and papers is the crucial question.

Components of Parliamentary Control

The following sections examine the different forms of parliamentary action, the characteristics of members, and the role of the mass media as they have affected Parliament's role in security matters. The structure and processes of parliamentary activity vary from issue to issue. Among the factors that create the differences are: the size and importance of pressure groups in the area; whether a problem is strongly felt in some constituencies or regions, or is more generally, and more weakly, spread; whether the members sensitive to the problem are on the government or opposition side; previous parliamentary discussion; the scope of public discussion of an issue; its technical difficulty; and the size and influence of both bureaucracy and clientele. The following sections, and the subsequent case studies, will describe the special characteristic of the way Parliament has handled security matters.

Debates

Table II lists the debates on security matters in the House of Commons from 1966 to 1978. The total time taken by these debates is over 230 hours. As in a year there are something under 400 hours available for government business, this total for security represents more than half the government's time for one annual session. This is no small total for the thirteen year period, and not many other programmes would greatly exceed it. About half the total for security matters is found on two groups: the 1966 debates on the Spencer and Munsinger cases, the 1970 debates on the invocation of the War Measures Act, and the subsequent Public Order Act. The third large chunk was the security issues of 1977-78. Most of the rest of the time was spent on the Protection of Privacy (Wiretapping) bill of 1973, and the Immigration bill of 1977. Thus, although Parliament has spent a large amount of time on security business, the bulk of this time has been devoted to only a few topics. The House of Commons has never had a general debate on the purpose, policies or activities of the security service.

Parliament only debates when it has a motion before it. Motions can be initiated by government, the opposition, or private members. Government motions are of two kinds: first, the general sort like the throne speech and budget debates; and secondly, debates on bills and other specific government business. The general debates range over virtually any topic under the government's purview, and there is usually little continuity from speaker to speaker.

These debates lack direction, but they do give many members the opportunity to express their views on the state of the nation and the problems of their constituencies. The Solicitor General, Francis Fox, for example, took advantage of the throne speech debate in 1977 to make a statement reviewing the mandate and role of the security service in Canada, and developments that had occurred since the establishment of a Commission earlier in the year.[21] Mr. Baker for the Conservatives attempted to respond but, without advance notice of the content of Mr. Fox's remarks, his contribution was not noteworthy.[22]

Because of the pressure of time on Parliament, the government is chary of introducing motions for business which are not absolutely essential. Debate on bills especially is prolonged, repetitive, and uninteresting. A recent study found that newspaper coverage of question period exceeded coverage of debates on government bills by a ratio of thirty five to one, even though Parliament spent more time on bills.[23] The main government-initiated debates on security matters have been on bills. Several, such as the first mention of the Spencer case, the only discussion of the Mackenzie Commission Report, and the announcement of the establishment of the Commission of Inquiry, occurred when the ministers made statements in the House which were followed by statements from opposition spokesmen. These occasions are rare but important, discussion is brief, and there is no real debate, as there is no motion before Parliament.

Opposition occasions come primarily on 25 allotted supply days during the session. On these days the various parties choose a topic from the estimates, which in effect means from the whole range of the government's programmes and policies. The opposition, if it wishes, can choose a security matter for an allotted day, and has done so twice, one on 15 November, 1977, to discuss ministerial responsibility for security, the other on 17 February, 1978, to discuss the authority given to the RCMP. Supply days are a product of the reforms of the late sixties, and are in part a replacement of Committee of the Whole on supply, which was eliminated when examination of the estimates was assigned to the standing committees. The opposition is not entirely happy with supply days, and would like to get some estimates back on the floor of the House. So far it seems that the opposition has difficulty in mustering the resources for 25 useful and stimulating debates during a session.

Private members' time is scattered in one hour intervals throughout the session. Topics are chosen by draw. They are amongst the worst-attended and worst-reported parliamentary occasions. Because of the short time available, private members' bills or motions are rarely voted upon: the debate is simply adjourned. Sometimes the House refers private members' bills or motions to a committee, where they receive closer consideration. Private members' time has not been used for security matters. The "Late Show", on the motion to adjourn the House at 10 p.m., has been used several times to discuss security issues that have arisen in the House.

On rare occasions the House debates a question under standing order 26 — a matter requiring urgent consideration. Usually these are opposition motions. The opposition also uses a peculiar procedure whereby motions are

introduced on subjects of 'urgent and pressing necessity' under standing order 43 before question period, but these motions are almost never debated and simply draw attention to an issue. The Debate on the Invocation of the War Measures Act in 1970 was a rare exception. S.O. 26 was used twice in 1977 to discuss the alleged involvement of the security service in illegal activities.

A remarkable aspect of the 1977-8 discussions of security is the large number of questions of privilege raised and debated at length. In part this shows a readiness of the Speaker, Mr. Jerome, to entertain such motions. In 1966, the former speaker, Mr. Lamoureux, had permitted the debate on the Munsinger Affair on an extremely relaxed interpretation of privilege, but in general he did not encourage debates on privilege. But in part also the large number of privilege issues in 1977-8 reflects the nature of the problems of the role of Parliament in security matters: the difficulty Parliament has in obtaining information on secret activities; the unwillingness of the government to answer questions; Parliament's attempts to assert its power vis-a-vis the government; and the independence of Parliament from government surveillance. The rights and powers of Parliament are the essence of privilege.

Debates in the Canadian Parliament are not normally well-reported or exciting. Proposals have been made for reducing their length and improving the use of time, but at present reform of Parliament is in abeyance, and the Standing Committee on Procedure has not met for two sessions.

In short, the House of Commons has had ample opportunity to debate security matters, but the bulk of the time has been spent on a restricted range of topics and debates have tended to emphasize a few points without a general overview. This in part doubtless derives from the general lack of information on security matters.

TABLE II — DEBATES ON SECURITY MATTERS IN THE HOUSE OF COMMONS, JAN. 1966 - MAY 1978

Date	Topic	Occasion	Length
31 Jan. 1966	Spencer Case	Statement of the Minister of Justice	40 minutes
23 Feb. 1966	Spencer Case	Supply, Department of Justice	1 hr. 25 min.
25 Feb. 1966	Spencer Case	Supply, Department of Justice	2 hours
28 Feb. 1966	Spencer Case	Supply, Department of Justice	4 hours
4 Mar. 1966	Spencer Case	Supply, Department of Justice	5 hours
7 Mar. 1966	Spencer Case	Supply, Department of Justice	1 hr. 25 min.
10 Mar. 1966	Munsinger Case	Question of Privilege*	4 hr. 35 min.
11 Mar. 1966	Munsinger Case	Question of Privilege	6 hours

* Only questions of privilege which occupied at least ten minutes of debate have been included here.

TABLE II (*Continued*)

Date	Topic	Occasion	Length
14 Mar. 1966	Munsinger Case	Question of Privilege	4 hr. 20 min.
15 Mar. 1966	Munsinger Case	Question of Privilege	2 hours
2 May 1966	Morality in Government	Motion to go into Committee of Supply	4 hr. 15 min.
26 June 1969	Mackenzie Commission Report	Statement by Prime Minister	40 minutes
16 Oct. 1970	Invocation of War Measures Act	Under S.O. 43	9 hr. 30 min.
17 Oct. 1970	Invocation of War Measures Act	Under S.O. 43	11 hr. 55 min.
4 Nov. 1970	Public Order (Temporary Measures) Act, 1970, C-181	Second Reading	3 hours
5 Nov. 1970	Public Order (Temporary Measures) Act, 1970, C-181	Second Reading	5 hours
6 Nov. 1970	Public Order (Temporary Measures) Act, 1970, C-181	Committee of the Whole	3 hours
9 Nov. 1970	Public Order (Temporary Measures) Act, 1970, C-181	Committee of the Whole	3 hr. 45 min.
10 Nov. 1970	Public Order (Temporary Measures) Act, 1970, C-181	Committee of the Whole	4 hr. 50 min.
13 Nov. 1970	Public Order (Temporary Measures) Act, 1970, C-181	Committee of the Whole	2 hr. 50 min.
16 Nov. 1970	Public Order (Temporary Measures) Act, 1970, C-181	Committee of the Whole	4 hr. 30 min.
17 Nov. 1970	Public Order (Temporary Measures) Act, 1970, C-181	Committee of the Whole	4 hr. 50 min.
23 Nov. 1970	Public Order (Temporary Measures) Act, 1970, C-181	Committee and Third Reading	3 hr. 55 min.
24 Nov. 1970	Public Order (Temporary Measures) Act, 1970, C-181	Third Reading	2 hours
25 Nov. 1970	Public Order (Temporary Measures) Act, 1970, C-181	Third Reading	2 hr 50 min.
26 Nov. 1970	Public Order (Temporary Measures) Act, 1970, C-181	Third Reading	2 hr. 35 min.

TABLE II (*Continued*)

Date	Topic	Occasion	Length
30 Nov. 1970	Public Order (Temporary Measures) Act, 1970, C-181	Third Reading	30 minutes
1 Dec. 1970	Public Order (Temporary Measures) Act, 1970, C-181	Vote on Third Reading	
13 May 1971	Formation of Joint Committee to Study Emergency Measures Legislation	Motion to establish the committee	3 hr. 25 min.
19 May 1971	Formation of Joint Committee to Study Emergency Measures Legislation	Motion to establish the committee	2 hr. 25 min.
9 Sept. 1971	Royal Canadian Mounted Police: Role of Civilian Security Force Respecting Changes	Adjournment	10 minutes
21 Sept. 1971	Security and Research Planning Group	Minister's Statement	35 minutes
2 Dec. 1971	National Security: Authority for Payment of Special Force	Adjournment	10 minutes
9 Mar. 1972	Inquiry as to Advice from Security Planning Research Group	Adjournment	10 minutes
2 May 1973	Protection of Privacy (C-6)**	Second Reading	3 hours
7 May 1973	Protection of Privacy (C-176)	Second Reading	7 hr. 20 min.
8 May 1973	Protection of Privacy (C-176)	Second Reading	2 hr. 45 min.
22 Nov. 1973	Protection of Privacy (C-176)	Report	3 hr. 50 min.
23 Nov. 1973	Protection of Privacy (C-176)	Report	1 hr. 25 min.
27 Nov. 1973	Protection of Privacy (C-176)	Report	3 hours
28 Nov. 1973	Protection of Privacy (C-176)	Report	2 hr. 35 min.
29 Nov. 1973	Protection of Privacy (C-176)	Report	3 hr. 50 min.
30 Nov. 1973	Protection of Privacy (C-176)	Report	30 minutes
4 Dec. 1973	Protection of Privacy (C-176)	Report	1 hr. 50 min.
5 Dec. 1973	Protection of Privacy (C-176)	Third Reading	2 hr. 50 min.
25 Mar. 1975	Method of handling Security Estimates	Privilege	25 minutes
10 Mar. 1977	Immigration Act, 1970** (C-24)	Second Reading	2 hours

** Only parts of this act and debate were relevant to security.

TABLE II (*Continued*)

Date	Topic	Occasion	Length
11 Mar. 1977	Immigration Act, 1970** (C-24)	Second Reading	2 hr. 40 min.
14 Mar. 1977	Immigration Act, 1970** (C-24)	Second Reading	3 hr. 40 min.
15 Mar. 1977	Immigration Act, 1970** (C-24)	Second Reading	2 hr. 40 min.
21 Mar. 1977	Immigration Act, 1970** (C-24)	Second Reading (Bill referred to committee)	2 hr. 5 min.
24 May 1977	Compensation to those identified as being on black list	Adjournment	10 minutes
21 July 1977	Immigration Act, 1970 (C-24)	Report	5 hours
22 July 1977	Immigration Act, 1970 (C-24)	Report	3 hr. 35 min.
25 July 1977	Immigration Act, 1970 (C-24)	Report	2 hours
17 June 1977	A.P.L.Q. Break-in	Minister's statement	1 hr. 45 min.
21 June 1977	A.P.L.Q. Break-in	Privilege	1 hr. 40 min.
21 June 1977	A.P.L.Q. Break-in	S.O. 26	4 hours
6 July 1977	Establishment of McDonald Commission	Minister's statement	1 hr. 40 min.
4 Aug. 1977	Ministerial Responsibility for Security Services	Adjournment	10 minutes
31 Oct. 1977	Involvement of RCMP in illegal activities	S.O. 26	6 hr. 50 min.
3 Nov. 1977	Alleged Misleading of House by Solicitor General	Privilege	15 minutes
8 Nov. 1977	Powers of the McDonald Commission	Adjournment	10 minutes
9 Nov. 1977	Clarification of remarks by Hon. Monique Begin	Privilege	35 minutes
9 Nov. 1977	Security of Parliament	Speaker's Statement	20 minutes
14 Nov. 1977	Various issues	Privilege	1 hour
15 Nov. 1977	Ministerial Responsibility for security	Supply (Allotted Day)	5 hr. 20 min.
18 Nov. 1977	Ministerial Responsibility	Privilege	10 minutes
3 Feb. 1978	Ministerial Responsibility in answering questions	Privilege	45 minutes
6 Feb. 1978	Ministerial Responsibility in answering questions	Privilege	2 hr. 5 min.
17 Feb. 1978	Authority given RCMP	Supply (Allotted Day)	4 hr. 30 min.

** Only part of this act and debate were relevant to security.

TABLE II (*Concluded*)

Date	Topic	Occasion	Length
2 Mar. 1978	Mr. Cossitt and Secret Documents	Privilege	2 hr. 20 min.
6 Mar. 1978	Mr. Cossitt and Secret Documents. Applicability of Official Secrets Act to MPs.	Privilege	50 minutes
8 Mar. 1978	Applicability of Official Secrets Act to MPs. Electronic Surveillance of MPs.	Privilege	50 minutes
9 Mar. 1978	Electronic Surveillance of MPs. Refusal of Solicitor General to answer questions	Privilege	1 hr. 20 min.
14 Mar. 1978	Criminal Code Amendment (Mail Opening) C-26	Second Reading	2 hours
20 Mar. 1978	Criminal Code Amendment (Mail Opening) C-26	Second Reading	2 hr. 35 min.
26 April 1978	Answers given by Solicitor General, Surveillance of Candidates for Public Office	Privilege	15 minutes
28 April 1978	Answers given by Solicitor General. Surveillance of Candidates for Public Office	Privilege	50 minutes

Question Period

The best attended and best reported part of Parliament's business is the question period. This is a forty-five minute daily session in which oral questions are asked of ministers, largely by the opposition, with provision for supplementary questions after the first answer. Ministers rarely have notice of questions, although members do on occasion give notice so that a minister may have time to prepare a response. The Speaker may rule a question out of order, but only after it has been asked and, hence, is part of the record. This sometimes causes difficulty when an allegation is made in a question, but cannot be answered by the minister.

Question period is a free-wheeling affair, with tremendous spontaneity and vitality. The first rounds of questions are by convention awarded to the opposition front bench spokesmen, and for the remainder of the period backbenchers compete vigorously for 'the Speaker's eye': he chooses the questioners after the first rounds. The main topics raised in question period are normally the same as are found on the front pages of the major newspapers, or which were raised on television the previous evening, and the ministers' office staff are at least as diligent in spotting possible questions and briefing their ministers with answers as opposition members and research staff are in preparing questions and supplementaries. There is some continuity during a question period if the opposition is on to a good thing, but with over a hundred opposition members representing all parts of Canada it is usual for any given question period to cover a huge range of topics, and leap from one to the other with no logical connection. The Speaker's role is rather to ensure fairness in

distribution to members of opportunities to question, than to ensure the thorough ventilation of a few issues.

Most members of Parliament are in their seats for question period. The press and public galleries are packed. Since the advent of the electronic hansard, the bulk of television coverage of Parliament uses excerpts from question period. One of the most remarkable sights in the House is the exodus after question period: where there were 250 members there are now 25; where the press galleries were packed, two or three remain; the public galleries empty.

The Canadian question period contrasts favourably with the British, in which questions, although answered orally, are written and the minister often has a week or more in which to prepare an answer. The Canadian question period, because it does not have the delay between asking and answering, is more topical and spontaneous.

Where questions in Canada are normally only ruled out of order after they have been asked, in Britain the Table (that is, the Clerks of the House acting under the authority of the Speaker) can refuse to permit questions that are out of order even to be asked, by not accepting them. Once a British minister refuses to answer a question on a topic (often because to do so would not be in the "public" or "national" interest), the Table will accept no more questions on that subject. Nor will supplementary questions, or adjournment debates, be accepted on the subject.[24] These forbidden topics include details of arms sales and purchases, information on telephone tapping and security source operations, police operational matters, and information on cabinet committees.

There is more freedom to ask questions in Canada. But asking does not ensure informative answer. The minister in Canada can give any reply he chooses to questions, as long as his answer is in order, in parliamentary language, and not irrelevant. He can choose not to reply, and sit and ignore the question. If a member is not satisfied with the answer he receives during question period, he can raise the issue on adjournment of the House, when there is an opportunity for brief debate between the questioner and the minister or his parliamentary secretary.

By far the most frequent occasions on which Parliament has discussed security matters have been during question period; however, the same statement could be made about most issues. Questions are used to bring the government's attention to a topic, to get media attention, to raise an issue for later discussion, to nag the government on a weak point, and sometimes even to obtain information. In doing any of these things, the success of questioning depends at least as much on factors outside Parliament, especially the interest of the media and outside groups, as on the prestige of the questioner and the cogency of his questions.

An example of a total failure to get results in questioning on security matters has been the opposition's efforts to get the government to reveal the information, not generally available to the public, on the reasons for the invo-

cation of the War Measures Act in 1970. (This is discussed in detail below, in the section "Parliament, the FLQ Crisis, and Emergency Measures".) In the immediate aftermath of the crisis, Prime Minister Trudeau said that the facts which were already available to the public were sufficient to justify the invocation,[25] although Mr. Turner, the Minister of Justice, had earlier stated that Canadians would not be able fully to appreciate the decision until some day the full details could be made public.[26] Although pressed by the opposition parties, the Prime Minister refused to budge.[27] The issue has continued to rankle opposition members. Ex-Prime Minister Diefenbaker and Mr. Broadbent, the leader of the NDP, raised it again in 1975 after a CBC television programme on the 1970 crisis.[28] More recently, Mr. Matte of the Creditistes, has pursued the topic, again without success.[29] The issue has by no means been neglected, but the government has obviously felt under no compulsion to comply with requests. Without strong support by the media, and with the government clearly taking responsibility for an act of political judgment, the opposition has not been in a strong position.

By contrast, the government reversed itself on the issue of setting up an inquiry to investigate alleged illegal acts of the RCMP, and parliamentary questions were a major weapon in this battle. This issue was first raised in Parliament on 31 March, 1976, when the Solicitor General was asked if he was aware of alleged RCMP involvement in a break-in at the Agence de Presse Libre du Québec in 1972.[30] On the second of April, M. Matte proposed that a Committee of the House, or a Commission of Inquiry, be established to investigate.[31] Sporadic questioning on this and related issues continued for well over a year,[32] until in May, 1977, a trial began in Montreal of police officers involved in the break-in. The RCMP officers involved entered a plea of guilty. In the House, the Solicitor General was vigorously questioned, as before, on whether headquarters had authorized the break-in, the extent to which the minister and headquarters had subsequently known about it, whether it was an isolated incident of law-breaking, and whether the government would set up an independent inquiry.[33] After the Government of Quebec announced that it would establish an inquiry into the affair, Mr. Clark, the leader of the Conservatives, and Mr. Broadbent of the NDP, demanded similar action by the federal government.[34] On June 17, Mr. Francis Fox, the Solicitor General, made a lengthy statement to the House in which he said that a year earlier, when the issue had first been raised, the government had considered establishing a Commission of Inquiry, but had received "repeated and unequivocal assurances from the RCMP that the APLQ incident was exceptional and isolated, and that the directives of the RCMP to its members clearly require that all of their actions take place within the law."[35] They had therefore decided against establishing a commission.

The opposition was not satisfied with this, however, and continued to demand an inquiry. Several other instances of possible illegal or improper activities by the RCMP had emerged — the Praxis break-in in Toronto; an investigation of Royal American Road Shows in Edmonton — and question period on the Monday following Mr. Fox's Friday statement was completely taken up by the issue, and continued until 3:45 p.m., taking nearly twice its

usual time. The next day there was only one question,[36] but a discussion of question of privilege over the accountability to Parliament of former ministers occupied nearly two hours, and a debate under S.O.26 (for the purpose of discussing a specific and important matter requiring urgent consideration) in which both Mr. Broadbent, the leader of the NDP, and Mr. Clark, the leader of the Conservatives, demanded a public inquiry, occupied a further four hours. Much of question period the next day was also on the same topic,[37] and similarly for the remainder of the week. Monday, June 27, saw renewed attacks. By this time, the opposition was supported by major newspapers across Canada, and outside the House many allegations were made of further RCMP wrongdoings. On July 6, the Solicitor General told the House:

> These allegations received our immediate attention. At my request, the deputy solicitor general of Canada and the assistant attorney general, criminal law, personally met with some of the individuals who made these allegations. In addition, I asked the Commissioner of the RCMP to undertake the investigations which were warranted. He later informed me, after having made preliminary inquiries, that some of these allegations might well have some basis in fact. According to the commissioner, it would appear that some members of the RCMP in the discharge of their responsibility to protect national security could well have used methods or could have been involved in actions which were neither authorized nor provided for by law. As a result, the commissioner has modified his position and has recommended that the government establish a commission of inquiry into the operations and the policies of the RCMP security service, on a national basis.
>
> (*Translation*)
>
> In the circumstances, Mr. Speaker, and considering these new developments, the government has decided to establish an inquiry commission composed of three members who will be responsible for determining the scope and frequency of inquiry practices and other activities which are not permitted or provided for in the law, involving members of the RCMP, and for examining the policies and procedures regulating RCMP activities in their task, which consist in protecting the country and ensuring its security.[38]

With this capitulation, a new chapter began.

It would be silly to claim that questions in the House caused the government to capitulate. A political system is complex and multi-channelled, and each institution overlaps in function and activity with many others. Also involved in this issue were the courts in Quebec, the Government of Quebec, the mass media, civil rights groups, individuals, personal contacts of ministers, and many others. Parliamentary debates played their part. Nevertheless, question period was the forum in which the government was forced to face, day after day, incessant nagging on the issue. It could not prevent questions from being asked, nor could it, because of the importance of the issue, ignore them. It took well over a year from the time an inquiry was first requested, but in the end the opposition had its way. The constant nag of question period, and the attendant media exposure, had no small part in the decision.

Committees

The Canadian House of Commons has many different kinds of committees. The most important are a series of specialist Standing Committees which, in scope and subject matter, roughly reflect the distribution of functions among departments. The Standing Committee on Justice and Legal Affairs includes the Department of Justice and the Department of the Solicitor General under its purview, and hence has been most involved with security matters. It, like most of the specialist committees, has twenty members. The Standing Committee on External Affairs and National Defence, which has had a peripheral interest in security matters, is unusual in having thirty members. Another standing committee, the Public Accounts Committee, reviews the accounts of the government with the assistance of the Auditor General and his report. The Committee on Procedures and Organization, which is smaller than the specialist committees, performs the important and difficult task of considering revisions to the rules of the House. The Committee on Regulations and other Statutory Instruments, which is a joint committee of the House and the Senate, examines delegated legislation.

In addition, the House can create special committees which endure until the end of a session. Special joint committees of the House and Senate have twice been created to consider changes to the constitution. When the government, after the crisis of 1970, wanted to devise new legislation to deal with emergencies, it proposed a special joint committee as the means by which Parliament would examine the problem (see below, "Parliament and the FLQ Crisis). In 1978, a problem arose of the liability of a member of Parliament who obtains secret information and reveals it in the House; a special committee on members' rights and immunities, consisting of eight senior and respected members, was established to study the problem.[39]

Committees are creations of the House, and only have power and rights insofar as they are granted by the House. They can have three sorts of subject matter referred to them by the House: bills, estimates, and special references. Most bills are referred to a standing committee after second reading, although some, like the Public Order (Temporary Measures) Act of 1970, are considered by Committee of the Whole. Committee of the Whole is used when legislation is so important and urgent that the slower process and smaller forum of the standing committee is considered inappropriate. Standing committees can report a bill with or without amendments, but they do not make any additional report commenting on the bill. In examining estimates, committees can study as widely as the programmes and policies in the appropriate estimates permit. On occasion, committees have used the opportunity provided by the examination of estimates to make an intensive study of a problem area. Committees run into a difficulty, however, in having the House consider extended reports on the estimates. Several rulings of the Speaker have established that such reports will not be debated in motions of concurrence, and that the appropriate place for consideration would be an allotted supply day.[40] Supply days are invariably used for other purposes, however. This has discouraged most committees from making detailed investigations in opportunities

provided by the estimates, although others have still made long reports, knowing that a motion of concurrence in them would be ruled out of order. A good example is the recent report of the Fisheries and Forestry Committee on humane trapping.[41] Special references can include virtually any subject which the House (normally in effect meaning the government) wants considered by a committee. The green paper on legislation on public access to government documents, for example, was referred to the Regulations and Statutory Instruments Committee in the most recent session; and in the same session the Justice and Legal Affairs Committee considered the subject matter of nine private members' bills dealing with pornography. Reports on special references can be as extensive and detailed as the Committee wishes and is able to do.

The committees of the House of Commons are not entirely successful at present. Three problems stand out. First, the committees are an extensive drain on the time and energy of members. There are at present too many committees, and they have too many members. Committees normally also have a very large turnover of members, which can be over 100 percent during a session. Each committee normally, however, has a core of membership which remains stable during a session, and even from session to session. A sensible and frequently proposed reform would be to reduce the size of standing committees to fourteen or sixteen, so that membership would be more stable, and the burden on members would be reduced. The special committees normally have a small membership to cope with this problem.

Secondly, committees are not free from government control, which is exercised through three main instruments: the government majority on the committees; the appropriate parliamentary secretary, who normally sits on both the committee and its steering committee; and the committee chairman who, apart from the public accounts committee, is chosen from the government side. Government control, manifest or latent, makes it difficult for the committees to serve as independent watchdogs criticizing and examining the government on behalf of Parliament. Where they have succeeded in asserting independence, it has usually been either because one of the instruments of control is missing (as with a minority government, or when there is no parliamentary secretary, or the chairman is very independent), or else the subject matter is not one which arouses partisan feeling, and members from both sides share a common concern over a programme or policy.

A good example of an effective, independent committee in recent years has been the Standing Committee on Justice and Legal Affairs under the chairmanship of Mark MacGuigan. This Committee had the experience of an extremely useful investigation into prisons behind it by 1977. In the fall of that year, the Committee used the opportunity provided by consideration of supplementary estimates to investigate security matters, and examine witnesses from the RCMP in three *in camera* meetings. Quite possibly the Committee would have made a more intensive investigation if the government had not been extremely reluctant for it to do so. In 1978, the same Committee was asked to consider Bill C-26, concerning the interception of mail. The Committee began its hearings with a strong and severe questioning by the par-

liamentary secretary, Mr. Baker, of Mr. Alan Borovoy from the Canadian Civil Liberties Association. Mr. Baker later tempered his questioning, and the Committee showed no haste in considering the bill. It can be suspected that there was reluctance in the Liberal caucus, and quite likely in the Solicitor General also, as well as in the opposition, to approve this bill, and that the chairman was following his own inclination and the general view of members in not rushing things. The parliamentary secretary was also probably responding to these views. The bill was not reported from committee, and died with the end of the session. It can be seen that the chairman, the members, the various caucuses and the government all have a say in how a committee operates, with the chairman having a key role in balancing interests, directing the inquiry, and ensuring fair play.

Thirdly, under the best of circumstances, the ability of a committee to investigate is severely limited. Ministers are under no more obligation to give detailed answers to a committee than they are to the House in question period. They can choose not to answer questions in committee. When civil servants appear as witnesses, they speak on behalf of the minister and are limited, in answering, to what the ministers permit them to say. Thus it is unlikely that committees will get answers from civil servants that contradict or cast doubt on the statements of ministers. The staff resources of committees are few, although the Library of Parliament provides some assistance, and the research groups in the party caucuses can aid their members. Committees on occasion also hire counsel or outside research groups. With the exception of the Public Accounts Committee, however, committees generally are thinly staffed. At the best their staff normally numbers in the twos or threes, rather than in the tens or twenties. The techniques of questioning can also impede investigation. To ensure fairness, each member is normally allotted five or ten minutes, and when this is over another member follows. The questioning consequently often lacks continuity, and can fail to achieve a key point because a member's time is up. When committees show more flexibility and a better use of time, it is usually because the subject matter is non-partisan, and media attention lacking. The Procedure and Organization Committee usually pursues a topic effectively, and so also did the Regulations and Statutory Instruments Committee in its investigation of the green paper on access to government documents.

Committees have not been active in security matters. The Spencer and Munsinger cases of 1966 were not handled by any committee, nor was the Mackenzie Commission Report or the crisis of October 1970. The government's proposal in 1971 to establish a committee to consider emergency measures legislation was rejected by the opposition because the government did not want the committee to examine the reason for the invocation of the War Measures Act. In 1973, the Justice and Legal Affairs Committee was twice briefed *in camera* on security matters, and since that time, according to Mr. Robin Bourne, Director of the Police and Security Planning and Analysis Group, there has been an "annual briefing by the RCMP Security Service of the Parliamentary Committee on Justice and Legal Affairs, at which members of Parliament from all political parties are fully briefed about the threat to

security and the overt and covert activities of the Security Service,"[42] although in 1976, the offer of a briefing was made to the Committee, but was not taken up. Subsequent events have cast doubt on the fullness of the briefing. Mr. Drury explained the purpose of these *in camera* sessions to the House:

> *Mr. Drury*: In order to secure funds for these operations, we must and should seek the approval of Parliament. The matter must, therefore, be included in the estimates. The problem, from the administrative point of view, is how —
>
> *Mr. Clark* (Rocky Mountain): To hide it.
>
> *Mr. Drury*: — to seek this parliamentary approval without disclosing in a comprehensible and clear way precisely what is being done, and how. In order to achieve this purpose, an endeavour is made not to include in the estimates, as normally is the case with other programs, a discrete heading showing the entire amount of effort, or the entire number of people and the entire organization and purposes involved in counter-subversive operations: these are not put under one heading as by doing so we would serve the cause to which the organization is opposed. To do so would serve them admirably but it would not help Canadians and our parliamentarians.
>
> To get over this dilemma, when members of the House or the House collectively have felt in the past they must know either the global arrangements or the details of the program, we have, on matters involving national security arrangements, informed parliament *in camera* rather than on a public basis. Members who participate in such *in camera* sessions are under the obligation not to use the information they acquire in public ways or in connection with any other program.[43]

In 1977, as had been noted, the Committee took a more active interest in security issues, but its efforts did not result in a report.

The External Affairs and Defence Committee has touched upon security matters from time to time, and has also received *in camera* briefings. Its concern, however, has only been a peripheral aspect during studies of other issues. Similarly, the Regulations and Statutory Instruments Committee has touched upon security matters in its study of the Canadian Human Rights Act, the Right to Information Act, and the green paper on access to government documents.

Committees meet *in camera* when reports are being discussed, often in investigation by sub-committees and, more important for security issues, when confidential information is to be disclosed to committees. The Special Committee on Members' Rights and Immunities has held its meetings *in camera*. The records of *in camera* meetings are not available for public scrutiny. The transcripts of some meetings are distributed to committee members, of others are kept by the chairman and the committee clerk, with a copy to the Speaker, while of other sessions no record is kept. In Britain, by comparison, many committee meetings are held *in camera*, and committees have developed the practice of later publishing a verbatim transcript of proceedings, from which confidential information has been "sidelined" (i.e. deleted). Publication of transcripts has the advantage of making generally available the information on which the committee based its report, and is evidence of the thoroughness and accuracy of the investigation. In Canada it is doubtful if *in camera* meetings add a great deal to members' knowledge. Names and details are doubtless

provided, but servants of the crown are still speaking on behalf of ministers, and must remain guarded in their comments. Little of the information revealed is likely to belong to the higher security classifications. If committees are to become more actively involved in security matters, they will, because of secrecy, have to rely extensively on *in camera* meetings. If investigation and reports are then based on *in camera* testimony, some sort of public record of these meetings will be necessary to protect both members and witnesses.

At first glance the small role of committees in security matters is surprising. Committees are the main investigative instrument of Parliament, and the most obvious weakness in parliamentary control of security activities is lack of information. However, it must be remembered that the government likes to maintain secrecy in these activities, and has discouraged, if not prevented, close scrutiny by committee. In addition, security issues have been intensely partisan in Canada. Commissioner Simmonds of the RCMP told the Justice and Legal Affairs Committee:

> ... in the ordinary course of police work, complaints against policemen can surface rather easily, because you go before the courts, because you are very visible people can complain easily to police commissions, to lawyers or whatever, and to their M.P.s ... quite often they may write letters in that direction. But we are very visible and problems tend to surface and get dealt with.
>
> The reverse is probably true in the Security Service because most of their operations are truly very hidden and not very visible, so they do not tend to surface, and when they do surface they ...
>
> *Mr. Neilson*: They really do.
>
> *Cmmr. Simmonds*: ... come up with a bang.[44]

Committees are ill-adapted to dealing with highly charged matters. The opposition attacks; the government uses its powers to protect witnesses and prevent inquiry; the opposition is frustrated and makes wild accusations; and both sides become upset and bitter. These problems are especially acute when members can grandstand in front of the media, but whether the House would be prepared to allay these problems by handling highly partisan issues through *in camera* meetings is doubtful.[45]

Members, and the Media

There are now 264 seats in the House of Commons, but this will increase to 282 after the next election. In comparison with other western nations, Canada has a very high turnover of M.P.'s. Each new Parliament is composed of 40 to 60 percent of new members serving their first term, compared with 10 to 20 percent in Great Britain or the United States. Consequently there are in the Canadian House relatively few members who have accumulated experience, knowledge and contacts over many sessions. In addition, in each new Parliament a substantial number of members of caucus and committees are new at the job, and will need time before they can perform effectively; and towards the end of each Parliament many members know they will not return, which also affects their performance.

Members of Parliament are individualists and have great latitude in choosing how they use their time. Some devote most of their energy to constituency problems, while others interest themselves in party affairs. A small proportion take a great interest in policy or programme areas and pursue these topics over the years. Members appointed to the cabinet or to particular shadow-cabinet posts are constrained in their choice of topics. Government backbenchers must normally toe the party line in debates and questions, but in committee, especially when media interest is low, they have more freedom to explore and criticize. No members have made security matters their main interest in Parliament, and with the lack of information and unwillingness of the government to discuss security activities in public it is difficult to see much reward to a member in specializing on security. The typical parliamentary discussion of security matters is a reaction to an issue raised elsewhere, rather than an initiative by Parliament itself.

The concerns of members, as will be seen, have in recent years been primarily with the civil rights aspects of security issues and with possibilities of scandals. A third concern has been with the adequacy of security measures, and in particular support of the RCMP against real or imagined threats in the bureaucratic and political jungle. The issues of 1977-78 are unusual in combining a defence of civil rights with criticism of the RCMP. The members most concerned with civil rights include the leaders and justice spokesmen of the Conservative and NDP parties; a smaller group of Conservatives has been interested in supporting the RCMP.

Members' concern with civil rights has been far more important than concern over the effectiveness of security activities. Members of Parliament belong overwhelmingly to the more advantaged groups in society, and the largest single professional group in the House is lawyers. It has frequently been argued that this socio-economic composition gives the House an unrepresentative right-wing elitist bias. Regardless of whether or not this is true in economic affairs, in security matters the tenor of the House, with its concern over civil rights, is frequently to the left of public opinion.* The best example of this is on a related policy, capital punishment, where both sides of the House support abolition, while the majority of Canadians and the RCMP do not. During the FLQ crisis of 1970, the opposition, with its doubts about the invocation of the War Measures Act, found itself out of tune with the majority of Canadians, and the Conservative Party modified its position accordingly. In criticizing the RCMP during the fall of 1977, the opposition again found itself arousing hostility, and muted its attacks as a result. The government, as in October, 1970, can appeal to the country over the House and weaken the effectiveness of the opposition.

The most important link between Parliament and the electorate is the mass media. They are not a neutral instrument. They help to shape, select, and create the news. Only a small part of what Parliament and its committees discuss ever reaches the media, and in security matters the media tend to publicize

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* This same phenomenon has been found in the United States. See H. McClosky, "Consensus and Ideology in American Politics," *American Political Science Review*, 58 (2), June, 1964; pp. 361-382.

the sensational and the scandalous. The media's concerns tend also to be short-term: one of the characteristics of Canadian culture has been the absence of reflective in-depth reporting and analysis, mid-way between the mass media and the learned journals. The interests of the media help to shape the concerns of Parliament, as well as the reverse.

The media have instigated much of the recent discussion of security matters. Table III (adapted from the *Globe and Mail*, 5 June, 1978) shows that of thirteen incidents of alleged improper activities, none was first disclosed by a backbencher or opposition member, and none by a parliamentary committee. Four were first revealed at official investigations outside the control of the federal government, three by the Solicitor General in Parliament, and six by television or newspapers. In secret activities, the media can only disclose what has been revealed to them, after there has in effect been a breach of security. Many other security issues, as will be seen, have also emerged from leaks. While the sensational aspects of leaks are titillating, the importance of these sources also indicates some of the problems of Parliament in handling security matters. Members do not have enough information to discuss security adequately, nor can they go to sources in government as they do with normal programmes. Leaks can be accidental, as the original disclosure of the APLQ break-in appears to have been, or intentional, as many of the others obviously were. Intentional leaks raise questions of who is leaking information, and for what purpose. They are intended to manipulate public opinion. Parliamentary control of a programme through such limited and biased sources of information satisfies no one.

The Senate

In theory the Senate has advantages over the House of Commons in investigating deeply into issues. It has greater stability in membership; its committees have the time to make thorough investigation, and its proceedings are less encumbered with excessive partisanship and publicity hunting. The government doubtless had these factors in mind when it proposed that a joint House-Senate Committee should consider proposals for emergency legislation. However, in practice the Senate has shown very little interest in security matters. The Public Order (Temporary Measures) Act of 1970 received there three days of debate, and the wiretapping legislation received four, none of which dealt directly with security. The Senate's question period is brief and uninteresting. The FLQ crisis of 1970 was almost completely ignored in questions during 1970, and the questions of 1977-8 similarly ignored the emerging problems with security activities. Over the years the Senate has shown more interest in the parliamentary restaurant than in security.

TABLE III — FIRST DISCLOSURE OF ALLEGED IMPROPER ACTIVITIES

		Date, Location & Legal Status	Public Disclosure
APLQ Break-In	Documents stolen at Agence Presse Libre du Québec, the Left-wing Montreal news agency.	Oct. 7, 1972. Montreal. Illegal.	March 1976 — At an unrelated Montreal trial

TABLE III (*Concluded*)

		Date, Location & Legal Status	Public Disclosure
Operation Ham	Break-in at offices housing Parti Quebecois membership lists and financial data. Information removed and copied.	Jan. 9, 1973. Montreal. May be illegal.	October, 1977. Francis Fox in the House of Commons.
400 Break-ins without warrants	Break-ins by the criminal investigations branch occurring mainly in British Columbia.	Since 1970. Canada-wide. Disputed.	November, 1977. CBC reveals break-ins. April, 1978, McDonald Commission reveals 400.
Investigation of NDP Waffle	Mounties thought Party had been penetrated by subversives.	1970-73. Mainly in Ontario. Undetermined.	August, 1977. The *Globe and Mail*.
Bugging of MPs	Targets have not been revealed except in the case of Warren Allmand.	Not disclosed. Undetermined.	August, 1977. The *Globe and Mail*.
Mail openings	Contrary to Post Office Act. More than 100 operations. Victims not divulged.	1950s to 1976. Canada-wide. Alleged illegal.	November, 1977. CBC.
Barn Burning	Barn was believed to be meeting place for terrorists. Mounties put future meeting plans up in smoke.	May, 1972, St. Anne de la Rochelle, Que. Alleged arson.	November, 1977. Keable Commission.
Theft of Dynamite	Reasons yet to be disclosed.	May, 1972. Near Montreal. Alleged theft.	November, 1977. Keable Commission.
Fake Communique	Issued by Security Service under forged signature of a Quebec extremist. Strategy was to excite extremists to violence.	Dec. 14, 1971. Montreal. Public Mischief.	January, 1978. Francis Fox.
Inspection of Confidential Medical Files	Mounties wanted information to aid them in the use of disruptive tactics against radical groups.	Since 1970. Canada-wide. Undetermined.	November, 1977. The *Globe & Mail*.
Spin-Off Wiretaps	Authority was given to tap one person but the Mounties extended it to include associates as well.	1975. Western Canada. Alleged illegal.	January, 1978. Laycraft Inquiry.
Monitoring Election Candidates	All candidates at all election levels checked to determine those of security interest.	Effective Canada-wide since 1950's. Undetermined.	April, 1978. The *Globe & Mail*.
Violence in Recruitment of Sources.	Pressure tactics used to build an informants' network. Francis Fox said maybe physical or moral violence used.	Early 1970's. Quebec. Undetermined.	January, 1978. Francis Fox.

III. Four Case Studies

While security activities are nothing new in Canada (Sir John A. Macdonald had an informer inside the Fenian leadership and was as well informed of their plans as they were themselves, and the RCMP had informers within the Communist Party of Canada from the early 1920's), the country and its leaders did not really become aware that subversion posed a serious threat to the well-being of the state until the revelations of Soviet espionage in 1945, when Igor Gouzenko, a cipher clerk at the Russian embassy in Ottawa, defected, bringing with his incontrovertible evidence of spy rings in Canada, the United States and Great Britain. Gouzenko first tried to reveal his information to an Ottawa newspaper; when this failed he tried to reach Mr. St. Laurent, the Minister of Justice. When Prime Minister Mackenzie King heard of the defection, his first worry was that if his Government was seen to support a defector, it might harm relations with their friends and allies, the Russians. The following day, September 7, Gouzenko was taken under the protection of the RCMP, and King learned that the situation was far worse than had been realized, and Gouzenko's papers "disclose an espionage system on a large scale".[1] The Prime Minister informed both President Truman and Prime Minister Attlee of the disclosures, and secret efforts began in all three countries to handle the espionage rings.

On October 6, the government adopted a secret Order-in-Council under the authority of the War Measures Act, which permitted the RCMP to detain and interrogate persons suspected of communicating information to a foreign power. No action was taken, however, until February, 1946, when the American broadcaster, Drew Pearson, revealed that King had gone to Washington to tell Truman about the Russian intrigue. Although King believed that Pearson's revelations had been inspired by the American State Department,[2] perhaps to prod the Canadians into acting, he concluded that perhaps it was "all for the best, as it gives us a special reason for starting immediately with our investigation".[3] A royal commission was set up, and on February 15 the Government made a public statement, and made the first arrests. King met in private to discuss the problem with John Bracken, the Leader of the Opposition. He also tried to reach Coldwell, leader of the CCF, and B. K. Sandwell, the editor of *Saturday Night*, in order to forestall criticism by civil liberties groups.

Parliament did not open until March 14, and in the meantime "public opinion had swung from shock and confusion to a degree of disbelief that the situation was as serious as the government implied it was."[4] The first interim report from the Commission was released on March 4, and King "felt relieved to see from editorial comments, news items, etc., that the public were now getting some real impression of the seriousness of the investigation and, with

it, justification for the Government's action."[5] The issue naturally was an important topic in Parliament, all the more so since a member, Fred Rose (Labour — Progressive) was arrested on opening day as he left Parliament Hill. Both the Conservative and CCF parties were concerned about the civil liberties issues such as secret Orders-in-Council, arbitrary arrest and detention, and being held incommunicado without access to counsel. Bracken's first reaction was that "from the evidence the government apparently has in its possession, it is to be commended for the action it has taken ...",[6] but not all his party agreed, and a backbencher, John Diefenbaker, was amongst others strong in criticism.[7] The third opposition party, the Social Credit, was stridently anti-communist. The leader, Solon Low, later demanded in the name of millions of Canadians, "that the government at once make conditions much more attractive in the RCMP and ... develop a strong investigations branch of the force, untrammelled and free to investigate and report on anyone against whom there is evidence of treasonable or unlawful subversive activities."[8] He proposed that the House set up a continuing watchdog committee over security activities. During March the government faced growing criticism in the House, and from civil liberties and legal associations. The Commission's third interim report was tabled on March 29, and on April 1 the obnoxious Order-in-Council was revoked. King felt:

> ... more and more put out at the course adopted by the espionage Commission in detaining the persons whom they had before them. It has done irreparable harm to the party, and my own name will not escape responsibility. Only the documentary knowledge I had in advance and its bearing on the safety of the State could have excused the course taken.[9]

On July 12, King received an advance copy of the final report. By this time it was clear to him that the Russians were enemies rather than friends.[10] On the basis of the Commission's report, eighteen persons were brought to trial, of whom eight were ultimately found guilty and served a prison term.

The Gouzenko revelations provided the stimulus for the creation of a large security service in Canada. For the next twenty years, the threats to the state with which it was concerned were largely, as in the Gouzenko affair, those of Soviet espionage and possible subversion by left-wing groups. During the worst of the cold and Korean wars, and with the example of McCarthyism to the south, the temper of the House was largely to encourage vigorous pursuit of espionage and subversion, although there was always a strong lingering concern for civil liberties. As the cold war waned during the 1960's, the concern for civil liberties came to predominate. The first of the following four case studies looks at the last of the Russian espionage issues and its aftermath. By the time of the second case study, the threat to the state had changed to internal dissent. The two concluding studies examine the way Parliament handled some of the ramifications of this new focus. The studies are in chronological order. No attempt has been made to include all parliamentary activities in security matters, but the four studies include the issues on which Parliament has spent the most time, and are representative of the different approaches and interests which Parliament brings to security matters.

Parliament and the Mackenzie Commission

The Mackenzie Commission episode ended quietly, but its start had all the characteristics of a good spy story: foreign powers subverting civil servants; suggestions of individuals crushed by the machine of state; intimations of wrong-doing in high places; a vicious political struggle; a European *femme fatale*; appeal to the observers' prurient interest; and a pervasive moral ambiguity. In May, 1965, the Department of External Affairs announced that two officials from the Soviet embassy in Ottawa had been expelled from Canada, and that a Canadian civil servant had been paid thousands of dollars for gathering information and documentation for espionage purposes.[11] The civil servant, according to Prime Minister Pearson's Memoirs, had been fired without trial under a clause in the Civil Service Act that did not provide for an appeal, and stripped of his pension rights. The government then and later declined to prosecute because the evidence was not sufficient for a conviction. Further, because the information was not secret, there was no breach of the Official Secrets Act. Also, a court case would compromise security procedures.[12] The civil servant usually remains anonymous in cases like this, but in November, 1965, George Victor Spencer, a Vancouver postal clerk, identified himself as the man in question, and the Minister of Justice, M. Lucien Cardin, confirmed this on television.

The Spencer affair slowly became a political issue, with the opposition demanding a judicial inquiry and the Minister replying on January 31, 1966, that this would not be necessary or useful. Prime Minister Pearson later confirmed this position.

When, in February, the estimates of the Justice Department came before the Committee of Supply, the Spencer affair dominated all other issues. At the time there was no limit on the time to be spent considering estimates in Committee of the Whole, and the opposition, on to a good thing, spent day after day hounding the Minister on the issue. Outside Parliament the press began to criticize the government. Inside, Diefenbaker, returning to his theme of 1946, claimed that Spencer had been scourged by despotism and denied fundamental human rights.[13] He demanded that the Spencer case be inquired into even if the inquiry had to be *in camera*, with the evidence kept secret. The government argued that they had followed normal procedures, and the Minister of Justice asked that Canadians have a basic trust and confidence in the abilities of the RCMP and the law officers of the Crown, and in the sense of responsibility of ministers.[14] The opposition would not accept this, however, and continued to badger Cardin until the Minister, on March 4, retorted that Diefenbaker was "the very last person in the house who can afford to give advice on the handling of security cases in Canada", and he wanted "the right hon. gentleman to tell the house about his participation in the Monseignor [sic] case when he was prime minister."[15]

This allusion lay festering while Parliament continued to pursue the Spencer affair. Later the same day, David Lewis, deputy leader of the NDP, read a telegram to the House in which Spencer asked for an inquiry into his pension rights,[16] and shortly thereafter Prime Minister Pearson capitulated

and announced that he would telephone Spencer and, if he wished an inquiry, the government would provide one.[17] Pearson had been under cross fire. Many of his backbenchers objected to the government's treatment of Spencer, and some had spoken openly in the House. The press was generally critical. Parliament was stalled. The Minister of Justice, on the other hand, was strongly opposed to the inquiry. It was only with great difficulty that Pearson kept him in the Cabinet, and his hostility was later to be displayed when he amplified his 'Monseignor' remarks. A one-man commission of Mr. Justice Wells of Toronto was established to investigate the Spencer issue.[18]

On March 7, with the House still in Committee of Supply on Justice estimates, Pearson announced his intention to establish a second royal commission "into the operation of our security procedures generally, with a view to ascertaining firstly whether they are now adequate in light of present circumstances for the protection of the state against subversive action; secondly, whether they sufficiently protect the rights of private individuals in any investigations which are made under existing procedures."[19] Eight months later, on the 16th of November, the Prime Minister tabled the Order-in-Council establishing the Mackenzie Commission.[20]

The press was curious about the 'Monseignor' case, and the government confirmed that the Minister of Justice was referring to 'Munsinger'. Cardin was not prepared to let the matter die. He informed a reporter from *The Globe and Mail* that national security was possibly involved, and that it would be worse than the Profumo spy and sex scandals which had brought down Prime Minister MacMillan in England. Cardin held a press conference on March 10, in which he revealed that an "Olga" Munsinger, who had engaged in espionage activities prior to coming to Canada in 1955, had association with Conservative ministers that constituted a security risk, and had returned to East Berlin in 1961, where she had died. He accused Diefenbaker of mishandling the case. Pearson had become aware of the case in 1964 when, after some of his ministers and ministerial aides had been accused by Diebenbaker of acting improperly, he had requested of the RCMP information on improprieties of politicians over the past ten years. The file had been in his office for fifteen months by this time. Pearson had written to Diefenbaker, and later discussed the matter privately with him. Pearson says in his memoirs that he had not wanted Cardin to release this sort of detail.[21] An important motive for the Minister of Justice seems to have been retaliation. Since becoming the opposition in 1963, the Conservatives had spent much of their energy in Parliament in pursuing scandals, and the ministers who had borne the brunt of these attacks had been French Canadians. Cardin later commented: "I was very much under the impression that Mr. Diefenbaker would use the Spencer affair to destroy me as he had used the Rivard affair to destroy ... Favreau, and the furniture affair to destroy Lamontagne and Tremblay, and other affairs for the other people. By coincidence or otherwise, all these people were of French origin. I was quite sure that I was next in line, and I was determined that it would not be so."[22] The Conservatives, with inadequate representation from French Canada, seemed unable to appreciate the harm caused themselves and French-English relations by their remorseless and cruel attacks. They also

seemed unable to appreciate that the scandal-hunting was not winning electoral support. The Toronto *Star* tracked down Mrs. "Gerda" Munsinger alive and well in Europe, where she identified the former Associate Defence Minister, Pierre Sevigny, and Transport Minister George Hees as her ministerial friends.

Meanwhile Parliament was in a total deadlock, and revulsion from the public, the press and members, against these unpleasant proceedings led to appeals from both leaders for a return to sanity. On March 14, Prime Minister Pearson appointed a royal commission under Mr. Justice Spence of the Supreme Court to examine the Munsinger affair.[23] In a heated debate, the Conservatives had demanded broad terms of reference, but those finally adopted requested Mr. Justice Spence only to report on whether or not the case constituted a security risk to Canada, and to investigate Diefenbaker's "failure" to seek the advice of the law officers of the Department of Justice. Pearson is reported to have objected in private to having the inquiry because "we can't have prime ministers investigated when they make a decision on their own. It's a prime minister's prerogative to make a wrong decision, and it's not subject to checks."[24] In his memoirs, however, Pearson says he spent the weekend "working on terms of reference wide enough to take in all of Cardin's statements, but precise enough to show that Diefenbaker's mishandling of a security situation was the real point at issue ...".[25]

The Spence Inquiry started *in camera*, but hearings were made public after protests from lawyers representing Diefenbaker and Fulton (who had been Diefenbaker's Minister of Justice). Diefenbaker later challenged the conduct of the commission, and his and Fulton's lawyers withdrew; Gordon Fairweather, a Conservative M.P., introduced a non-confidence motion in the House on the propriety of Pearson's handling of the affair, but it was defeated. Spence's report, which was released to the press on September 23, 1966, found that Mrs. Munsinger had been a security risk, that Sevigny had become one by association, and censured Diefenbaker for his handling of the issue. The Pearson Government was completely exonerated for its handling of the issue. When the report was tabled in the House on October 5, it was ignored. Diefenbaker, according to the *Globe and Mail*, gave no indication that he had ever heard of Mrs. Munsinger, Mr. Justice Spence or, for that matter, Mr. Pearson.[26] For its part, the *Globe and Mail* criticized both parties, and concluded that Canadians had been "wretchedly served" in the matter.[27] The Commission was criticized for not questioning M. Cardin. Professor Edward McWhinney, of the Law Faculty of McGill, commented: "Mr. Justice Spence has accepted the most flimsy, uncorroborated hearsay evidence, which no respectable court of law would accept for more than one moment, as pointing to the existence of wide-scale espionage activity in which prominent people in public life might be involved. Guilt by association, however indirect or far-fetched the association may be, is also not excluded from the ambit of the report."[28] A Commission which attempts to second-guess a prime minister's political judgment, even when it is headed by a Justice of the Supreme Court of Canada, leaves itself liable to this sort of criticism.

The report was not discussed further by Parliament. The report of the Wells Commission had been tabled on August 30. It completely exonerated the Liberal Government's handling of the Spencer affair. It was not then or ever discussed by Parliament. Spencer had died in the meantime.

The Munsinger and Spencer affairs mark a low point in the history of the Canadian Parliament. Its work had been disrupted for months. Canadians were disgusted with the bitterness, vengefulness, and triviality of the proceedings. The prestige of both party leaders had suffered irretrievably. There were no winners. Without changes in party leadership, Parliament could not calmly or reasonably discuss security matters, nor could confidential discussions in an atmosphere of trust be held between the leaders. It would take years to repair the damage.

The Mackenzie Commission was almost a by-product of these political events. Pearson gave the impression that the Commission was being established in response to public and parliamentary demands, and certainly Diefenbaker had strongly demanded such an inquiry,[29] but his memoirs reveal that he had a long-standing concern over security procedures.[30] The creation of the Commission was overshadowed by the other events, and although between March and November, when it was established, there were six questions in the House about progress, there was no significant expression of concern. When Pearson tabled the Order-in-Council which established it, there was no debate.

As the Commission conducted its investigation, the only parliamentary discussion of its work was occasional brief parliamentary questions and allusions in debate (twelve between January 1967, and October 1968), the bulk of which were simple inquiries as to when the report was expected. Thompson, the Leader of the Social Credit party, was the main inquirer. The report contained classified information which it was not desirable to publish, and between October, 1968, when the government received it, and 26 June 1969, when an abridged version was tabled, there was renewed interest. Stanfield, the new leader of the Conservatives, raised the question on four of the twelve occasions the government was asked when the report was expected. These were all straightforward inquiries of the minister, without partisan overtones.

When Prime Minister Trudeau tabled the abridged Mackenzie Commission Report on 26 June, 1969, he made a statement occupying about twenty minutes. He told the House that the leaders of the opposition parties, and former Prime Ministers Diefenbaker, Pearson and St. Laurent, had been sent copies the previous day. Not all of the recommendations of the Commission would be accepted, Mr. Trudeau said. The Government rejected the proposal for the establishment of a new civilian non-police agency to perform the functions of a security service; this could be better done within the RCMP, with appropriate modifications. One of these modifications was that university graduates would be able to enter the security directorate in a civilian capacity. However, the Government accepted the Commission's recommendation for the establishment of a Security Review Board, although he rejected the Board's conducting regular reviews of the Security Service, which was an important part of the proposal. The details of scope, character and operation of

the Board were still under consideration. The Prime Minister in conclusion emphasized that ministerial responsibility had to be maintained, and said that the government intended "to consult with the leaders of the opposition parties to determine how the report might best be made the subject of parliamentary debate during the next session."[31]

Stanfield, in response, said that the Conservatives might be more interested in a special security agency. He noted that the problems which led to the appointment of the Commission were not evidence that the service was inadequate or ineffective, but questions of safeguarding the rights of Canadians. He noted that "on matters relating to national security, Parliament has always accepted some considerable limit on its right to demand information and full disclosure by the government," but at the same time "Parliament will want to insist on assurances that the security operation, much of which must be carried on outside the purview of Parliament, is conducted with extreme care for fairness and common sense."[32] The Security Review Board was therefore welcomed, as was the spirit expressed in the Prime Minister's statement. In conclusion, Mr. Stanfield observed prophetically:

> ... What would be cause for grave concern would be any thought that much of the operation is beyond the ken of the ministry or the Prime Minister; that there are not ministers, elective [elected?] and responsible members of government, to whom the entire security operation is an open book, who have continuing access to everything that is going on in that area, and who give proper, responsible, political civilian direction to the operation on a continuing basis. None of us would want to see a security operation in this country running under its own steam and answerable only to itself — a government, so to speak, within the government. The very decision as to what affects security and what does not, what must be secret and what public, is finally a matter of political decision and judgment. The effective supremacy of the civilian authority must never be compromised in this matter.[33]

Mr. Douglas, for the NDP, felt that the idea of setting up a civilian non-police agency had a great deal of merit: "It takes a certain degree of training and sophistication to recognize the difference between honest dissent and a desire to subvert our democratic form of society."[34] He could not agree with the prime minister that the present review procedures worked satisfactorily. Parliament knew nothing about them because of secrecy. He supported the idea of the Security Review Board, but felt it must have the right to report directly to the Prime Minister. Réal Caouette, for the Creditistes, felt that law and order were threatened, and that economic improvement was needed to improve security: with a bad economic climate, not all the police forces in the world could prevent subversion.

The total interchange took nearly an hour, which is a long time for this sort of ministerial statement and response. In it, many major points in parliamentary control of security matters had been raised by the opposition, with a response by the government presumably to come when the report was discussed in detail at a future date. But this turned out to be the last as well as the first debate on the Mackenzie Commission Report, and the government never responded to the cogent questions raised by the opposition leaders. The

chronology of later efforts to discuss it shows some of the difficulties caused by the limited time available to Parliament, especially when the government had some reluctance to bare its soul.

In December, 1969, Mr. McCleave of the Conservatives, on an adjournment motion relating to the Company of Young Canadians, wondered if the Prime Minister would encourage a committee to be set up to look at subversion. The Broadcasting Committee, which had been looking at the CYC, had no idea what was omitted from the published version of the Mackenzie Commission Report, and Mr. McCleave wondered "Are we, as Members of Parliament, in a position properly to appreciate the type of subversive activity which is going on in Canada, and the steps being taken by the forces of law and order to meet these activities?"[35] The responding minister said that they should wait for the report of the Committee. In April, 1970, the question of implementation of the Mackenzie Commission Report was again raised.[36]

The October crisis of 1970 created a new set of security issues, but for a while some opposition members were still interested in the Report. During the debate on the Public Order Act in November, Mr. MacDonald of the Conservatives claimed that by and large the government had chosen to ignore the Mackenzie Commission Report, and the time had come for "the government and Parliament to seriously consider it."[37] The next day, in response to a question by Mr. Hees, the Prime Minister told the House that a review was underway as a result of the royal commission's report, and there would be "certain changes" in the structure of the RCMP. There were several other allusions to the Report during the next weeks. In December, the Prime Minister was asked by Mr. Nielsen of the Conservatives, whether the Security Review Board had been established. His response of "No" was followed by a supplementary asking when a debate on the report of the commission would be held, to which Trudeau replied that "perhaps the occasion would be when the government announces its policy on the review board."[39] In April, 1971, the Prime Minister told Mr. Nielsen that he would speak to the leader of the House about a debate, and in May he suggested that the debate on the resolution to establish a Committee to consider legislation on emergencies caused by lawlessness and violence would be the appropriate occasion.[40] In September, perhaps soured by the abortive attempt to create the committee, Trudeau replied to Mr. Woolliams of the Conservatives, that the problems in arranging a debate were caused by the government's inability to allot time, and early the next year he suggested that if the opposition felt it was so important they could bring it up on an alloted day, "otherwise we will bring it up in due course."[41]

In October, 1975, Mr. Rodrigues of the NDP asked a final question on the implementation of the Report.[42] In the meantime, without the benefit of parliamentary discussion or support, the government was, in secret, working out its own answers to the increasingly grave problems in security matters.

Parliament, the FLQ Crisis, and Emergency Measures

The Spencer and Munsinger affairs were dramas played on the stage of Parliament, with the country as spectator. In the crisis of October, 1970, the country was again the spectator, but government and FLQ the actors in a dialogue conducted through the media, with Parliament also largely a spectator. The media helped to shape the events. (The events of October, 1970, are too well known to need to be described here in detail.[43]) A brief chronology is presented in Table IV. In the crisis and its aftermath, the dilemma of the conflict between the constitutional limits of a liberal democracy and the paramount interest of reasons of state was raised but never fully confronted, and the steps later taken by the government, and the inadequacy of their consideration by Parliament, led to many of the later problems.

TABLE IV — CHRONOLOGY OF EVENT FLQ CRISIS, 1970

October 5	James Cross, British Trade Commissioner in Montreal, kidnapped
October 10	Pierre Laporte, Minister of Labour and Immigration in the Quebec Government, kidnapped
October 16	On the request for assistance by the Government of Quebec and the City of Montreal, Prime Minister Trudeau invokes the War Measures Act
October 17	Pierre Laporte killed
October 19	Parliament approves invocation of the War Measures Act
November 4 - December 1	Parliament debates the Public Order (Temporary Measures) Act
December 3	Cross released, his kidnappers leave for Cuba
December 27	Kidnappers and murderers of Pierre Laporte captured

From the beginning of the crisis on October 5 until the discovery of the Cross kidnappers in December, the government and the FLQ were never in direct contact. The FLQ communicated with the various authorities through messages conveyed to the media, and the authorities' responses were similarly conveyed to the FLQ through the media. The media acted as far more than simple relayers of messages, however, for their audience was the entire community, and inevitably they dramatized events and extracted every possible bit of excitement and newsworthiness from them. In addition, the media in Quebec tended to be leftist and French-Canadian nationalist in orientation, and at least part of the colouring they gave events reflected a sense of identity with some of the aims of the FLQ. The media thus were key participants in the drama, and were crucial in turning two kidnappings by small, isolated groups of terrorists into a crisis that threatened the structure of authority in Quebec and Canada. Some radio and television stations suspended much of their normal broadcasting, substituting event by event, on the spot reports on developments in the crisis.

After the kidnapping of Pierre Laporte, rumours spread that the Bourassa government was floundering and might collapse. Rallies of many thousands listened to Robert Lemieux, a lawyer acting on behalf of the FLQ, and to Vallières and other FLQ sympathizers. The 2,000 students of the

Faculty of Social Sciences of the University of Montreal went on strike, and the offices of the University of Quebec were occupied. There was a prospect of massive street demonstrations, and rumours that the next step would be the selective assassination of politicians. The military were called in to guard politicians in Ottawa and Quebec, and on October 15 more than 1,000 soldiers entered Montreal, to aid the civil power at the request of Bourassa. There were innumerable bomb threats.

The parliamentary record, up to consideration of the invocation of the War Measures Act, gives no intimation of the importance or excitement of the crisis. The government made very brief statements which were not debated on events, and discouraged questioning in the House.[44] The opposition parties respected the government's wishes, and did not pursue questions. The NDP in particular, in view of the delicacy of the situation, refrained from making any statements or asking provocative questions.[45] From October 5 to October 16, perhaps the most tense peacetime days in Canada's history, the record of the crisis can be written without reference to Parliament. It was clearly a matter of state, handled by the executive.

Trudeau had informed the leaders of the opposition parties and former Prime Ministers Diefenbaker and Pearson of his intention to invoke the War Measures Act in the evening of October 15; the Act was invoked in the early hours of October 16, the reason being that a state of real or apprehended insurrection existed.[46] Parliament, under S.O. 43, debated the invocation from October 16 to 19. At first, Stanfield was doubtful about the invocation. He recognized the necessity for extended police powers, but felt the Act was too sweeping, and objected to the provision against "unlawful association" (in effect, any association with members of the FLQ). T. C. Douglas, like Mr. Stanfield, supported the government in its refusal to accede to the demands of the FLQ, but he did not support the invocation of the Act. M. Caouette for the Creditistes, supported the government. In the vote on the motion on October 19, only the NDP opposed the government, and four of their members broke ranks and voted in support.[47] Quite likely, public opinion pushed the Conservatives towards support. One poll showed that 37 percent of Canadians believed the government was not tough enough, and 51 percent felt that it was about right. In Quebec, the comparable figures hardly differed: 32 and 54 percent.[48] A later poll showed 87 percent approving the invocation, and less than 6 percent disapproving of Trudeau.[49] (The survey also showed more than 50 percent favoured suppression of demonstrations by communists and student militants, 43 percent hippies, and over 30 percent labour militants and women's lib.) There was more concern over the civil rights aspect of the invocation in Parliament than in the country.

In fact, the outstanding characteristic and central focus of opposition discussion of the invocation of the War Measures Act, and of subsequent debate of the Public Order (Temporary Measures) Act, was concern over the protection of civil rights and the control of the powers of the government. At no time, even though the crisis dragged on for nearly three months, did the opposition parties strongly argue the need for extraordinary powers for

dealing with potential or actual terrorism, and quite the opposite, then and later, serious doubts were expressed as to whether the government actually needed the powers given it by the invocation of the Act, or by the Temporary Measures Act.

In the debate on invocation, Trudeau told Parliament that the use of the Act was "only an interim and somewhat unsatisfactory measure", promised to discuss with leaders of the opposition the possibility of introducing alternative legislation, and promised that the emergency powers would be withdrawn as soon as possible. He tabled the correspondence from Quebec authorities stating that they perceived a concerted effort to overthrow the government and democratic institutions. He then reminded the House, in a statement that applies as well to security matters in general as to emergency measures, that:

> ... this extreme position into which governments have been forced is in some respects a trap. It is a well known technique of revolutionary groups who attempt to destroy society by unjustified violence to goad the authorities into inflexible attitudes. The revolutionaries then employ this evidence of alleged authoritarianism as justification for the need to use violence in their renewed attacks on the social structure. I appeal to all Canadians not to become so obsessed by what the government has done today in response to terrorism that they forget the opening play in this vicious game. That play was taken by the revolutionaries; they chose to use bombing, murder and kidnapping.[50]

Justice Minister Turner gave the main explanation of the government's action. He pointed out that violence had been escalating in Quebec; that the kidnappings were leading to a type of erosion of public will, that there was great unrest in Quebec fomented by the crisis, and that Quebec and Montreal authorities had stated that they anticipated the danger of an insurrection. The police needed special powers, and these could have been provided either through invocation of the Act or introduction of special legislation. Because of the need for urgency and surprise, the quicker route of the War Measures Act was chosen. Turner concluded that "It is my hope that some day the full details of the intelligence upon which the government acted can be made public, because until that day comes the people of Canada will not be able fully to appreciate the course of action which has been taken by the government."[51] Jean Marchand, a senior minister from Quebec, added that the most pessimistic estimates were that the FLQ had 3,000 members, and "one thing is certain, Mr. Speaker — I don't know more than the police, probably much less — there is an organization which has thousands of guns, rifles, machine guns, bombs, and about 2,000 pounds of dynamite, more than enough to blow up the core of downtown Montreal."[52] Marchand also alleged that the FLQ had infiltrated many established Quebec organizations and groups.

Over the next few weeks the opposition tried without success to get more information on the apprehended insurrection. On October 23, the Prime Minister replied to Mr. Douglas, the Leader of the NDP:

> *Right Hon. P. E. Trudeau (Prime Minister)*: By now I would have thought this information was in the hands of everybody. We have at various times explained why the War Measures Act was brought in at the time it was. The first fact was that there had been kidnappings of two very important people in

> Canada, and that they were being held for ransom under threat of death. The second was that the government of the province of Quebec and the authorities of the city of Montreal asked the federal government to permit the use of exceptional measures because, in their own words, a state of apprehended insurrection existed. The third reason was our assessment of all the surrounding facts, which are known to the country by now — the state of confusion that existed in the province of Quebec in regard to these matters.
>
> * * * * * *
>
> I wish the leader of the New Democratic Party would ask himself how much information Kerensky had in the spring and summer of 1917 when he was pooh-poohing the possibility of an insurrection which in fact happened in October, 1917.[53]

A few days later, when asked if he had made a final decision not to make more information public, Mr. Trudeau replied: "Yes, no, yes, no, Mr. Speaker. It was not a final decision. When I answered this question on Friday, I added that it may be that we will have further facts to communicate to the House, but I impressed on the House then and I impress on them now, that the facts on which we did act are known to the people of Canada and indeed to this House. ... We decided to act on the facts as we interpreted them, and on this the government will stand or fall."[54] The next time Mr. Trudeau was asked whether he had acted on information which had not been disclosed, he retorted, "I acted on information that I had been accumulating since I was three years old."[55] It was not the sort of response that wins the confidence and trust of Parliament. The government, since that time, has held to its decision not to share its private information with Parliament.

The government had acted swiftly after the invocation of the Act, and by the time the House met on October 16, more than 150 persons were detained under the War Measures Act, and another hundred were detained by nightfall. 467 were arrested during the crisis. Most were detained for one to three weeks before being released, without trial, but some were held for three months. Many of the persons arrested were leaders of Quebec culture and artistic endeavours who had displayed strong separatist sympathies. The street demonstrations and student strikes were stopped. But the kidnappers of Cross, and the murderers of Laporte, were in the end detected through electronic surveillance and painstaking police work of the traditional sort and not through the aid of the War Measures Act. The Quebec Ombudsman later recommended that the victims of the arbitrary detentions receive compensation.

The Public Order (Temporary Measures) Act of 1970 was considered by the House between November 4 and December 1. The debates took an enormous amount of Parliament's time, and the main issues raised by the opposition were questions of protecting the civil rights of citizens. After two days of debate on second reading, the bill was approved 152 to 1. Conservative David MacDonald was the dissenter. The opposition continued, without success, to demand more information on the invocation of the War Measures Act, and the apprehended insurrection. Scepticism, both in Parliament and outside, grew as to the reality of the apprehended insurrection, and this was reflected in the vote on third reading of the Temporary Measures Act, when the NDP, the Creditistes, and two Conservatives, voted against the government.

The question of whether the invocation of the War Measures Act was justified remains one of the most perplexing problems in Canadian political history, and is not likely ever to be resolved to all parties' satisfaction. Whether the government could have done all that the War Measures Act permitted under the Criminal Code and other legislation, is one important issue.[56] Questions have also been raised about the importance of political motives, such as the imminent Montreal civic elections, and efforts to discredit separatism in general, in the invocation. Subsequent evidence that the strength of the FLQ, and its capacity and resources, were wildly exaggerated by Marchand and other government spokesmen have added fuel to the fire. On the other hand, terrorist groups rely on support from many ordinary citizens, and this sort of help was impeded by the stern measures. Inevitably the lingering doubts about the apprehended insurrection have coloured the opposition parties' approach to subsequent security matters. The inability to resolve these doubts has also impeded discussion of other security issues.

The government, in the aftermath of the crisis, had to draw its own conclusions and plans for reform from the events. In particular, two crucial questions needed to be considered: first, was the information available to the government during the crisis adequate?; and secondly, were the legal and other instruments available sufficiently flexible and effective? The exaggerations of the strength of the FLQ suggest strongly either that the government was deliberately misleading the country, or that it was not, at the time, able to assess accurately the threat of a planned insurrection. The second conclusion is the more probable. Von Clausewitz' description of the problem of information in time of war describes the problem faced by the government during the crisis.

> Great part of the information obtained in War is contradictory, a still greater part is false, and by far the greatest part is of a doubtful character. What is required of an officer is a certain power of discrimination, which only knowledge of men and things and good judgement can give. The law of probability must be his guide. This is not a trifling difficulty even in respect of the first plans, which can be formed in the chamber outside the real sphere of War, but it is enormously increased when in the thick of War itself one report follows hard upon the heels of another; it is then fortunate if these reports in contradicting each other show a certain balance of probability, and thus themselves call forth a scrutiny. It is much worse for the inexperienced when accident does not render him this service, but one report supports another, confirms it, magnifies it, finishes off the picture with fresh touches of colour, until necessity in urgent haste forces from us a resolution which will soon be discovered to be folly, all those reports having been lies, exaggerations, errors, etc. etc. In a few words, most reports are false, and the timidity of men acts as a multiplier of lies and untruths. As a general rule, every one is more inclined to lend credence to the bad than the good. Every one is inclined to magnify the bad in some measure, and although the alarms which are thus propagated like the waves of the sea subside into themselves, still, like them, without any apparent cause they rise again. Firm in reliance on his own better convictions, the Chief must stand like a rock against which the sea breaks its fury in vain. The role is not easy; he who is not by nature of a buoyant disposition, or trained by experience in War, and matured in judgment, may let it be his rule to do violence to his own natural conviction by inclining from the side of fear to that of hope, only by that means will he be able to preserve his balance. This difficulty of seeing things correctly, which is one of the greatest sources of friction

> in War, makes things appear quite different from what was expected. The impression of the senses is stronger than the force of the ideas resulting from methodical reflection, and this goes so far that no important undertaking was ever yet carried out without the Commander having to subdue new doubts in himself at the time of commencing the execution of his work.[57]

But even if at the time the government could reject the possibility of a co-ordinated insurrection guided by the FLQ (and it is not likely that they were absolutely certain that they could), there were other sorts of disorder that could threaten the state. France, in May, 1968, only two years earlier, had nearly been brought to collapse by a revolution that began with small student protests. The May, 1968, revolution in France had not been directed so much at overthrowing the system as at opposing it, and at no time did the revolutionaries show a serious intent to take over power for themselves. Montreal, in October 1970, had shown comparable beginnings of general unrest and defiance of authority.[58] Hannah Arendt had argued that the causes of violence such as in France in 1968 were not excessive force and authority in government, but an absence of these qualities. The logical counter-measure to violence of this type is an unmistakable display of authority and force by the government. In the politics of theatre, which the October crisis was, the invocation of the War Measures Act was the most dramatic and unequivocal display of force. The Act was also, as both government and opposition recognized a very blunt tool.

There were two obvious conclusions from after the event analysis: first, that the government's intelligence resources were inadequate and had to be improved; and second, that better emergency measures legislation was needed.

The government moved quickly in preparing alternative legislation, and in May, 1971, introduced a motion:

> That a Special Joint Committee of the Senate and House of Commons be appointed to examine, inquire into, and report upon the nature and kind of legislation required to deal with emergencies that may arise from time to time in the future by reason of lawlessness or violence in Canadian society, and that endanger the existence of government or the maintenance of peace and public order.[59]

Two months before, Mr. Macdonald of the Conservatives had asked if the proposed Committee was to examine the events of the previous fall, and the Prime Minister had replied: "Yes, Mr. Speaker; I take it that the speech was in the form of a representation and we will consider all possible ways of bringing this subject before Parliament and the Hon. Member will find out how it is done when the move is made."[60]

The day before the motion to establish the Committee was to be debated, Mr. Woolliams, Justice and Legal Affairs critic for the Conservatives, asked Mr. MacEachen, President of the Privy Council, if he agreed "that the alleged crisis that took place last fall would be material evidence" under the terms of the motion.[61] Mr. MacEachen replied that it was not intended that this investigation would be a back-looking one, but rather one looking to the future. Mr. Woolliams further questioned whether the minister agreed "that, in preparing

legislation for the future in reference to a possible crisis, what occurred in the province of Quebec and what occurred in Parliament with regard to legislation would be material evidence to assist the committee to come to a conclusion", and he added that a "yes" answer might shorten the coming debate considerably. The Minister did not commit himself. When the debate occurred, Mr. Woolliams moved an amendment that the Committee first enquire into the circumstances leading to the invocation of the War Measures Act.[62] The NDP supported the Conservative motion, while the Creditistes said they would refuse to sit on the Committee: "We will not allow them to laugh at us once more. Last fall the Prime Minister (Mr. Trudeau) sent a letter to all party leaders asking their suggestions in order to guide the government as to the policy to follow concerning the war measures, but even before our suggestions reached him the proposed legislation was already printed. People laughed at us on that occasion, and we certainly will not allow the government to do so again in a special joint committee."[63]

After two days of discussion, the debate was adjourned, and the motion was later dropped from the order paper. The government was not prepared to pay the price the opposition demanded, and new legislation was not then introduced in, or considered by, Parliament. Nor was it subsequently, although as late as October, 1975, the government stated that they intended to bring forward legislation to replace the War Measures Act to deal with civil disorder.[64] The main enduring concern of the opposition parties over the FLQ crisis continued to be whether invocation of the War Measures Act had been justified, and the government was pressed without success from time to time to make more information available, or to establish an inquiry into the issue.[65] Parliament's concern was civil rights, not the adequacy of security programmes.

The government offered some reasons for refusing to have the events of 1970 examined. Prime Minister Trudeau had given his explanation that the public record contained sufficient justification for the invocation. Mr. Chretien, another minister from Quebec, explained that "A lot of information we have on hand comes from informants, some of them highly placed. It would endanger their situation as well. We have good and sufficient reasons for invoking the War Measures Act. There are other reasons as well, and we will probably never be able to make them public."[66] But it was not explained why the information was not forthcoming, which Mr. Turner, the Minister of Justice, had hoped some day could be made public. The ambiguities and contradictions in the statements of various government spokesmen rankled with the opposition, and led to some suspicion that the government had things to hide, perhaps beyond secrets essential for national security.

If Parliament were to examine the events surrounding the invocation of the War Measures Act, it would not have an easy task. Parliament would in effect be reviewing the exercise of judgment in one of the most important recent political events. The Munsinger affair shows how unpleasant and fruitless this can be in even a less important issue. Parliament and the political processes are not sympathetic to the problems of decision-making in the condi-

tions of uncertainty which exist in all important problems, whether in a crisis like October, 1970, or in a less dramatic issue of the failure of a programme to achieve anticipated objectives. Government policies and actions are the proposition in debate; parliamentary opposition the counter-proposition, and rarely are the two points of view resolved through sympathy and common understanding. Criticism is all too often from the point of view of the ideal, before which all government actions must fail to some degree. In an age which has forgotten original sin, any fall from perfection is all too easy to criticize. Perhaps, however, the act of forcing a parliamentary committee to consider the events of 1970 could have created some understanding of the problem of politics as a vocation, rather than as a science.

The government also moved to improve intelligence. Mr. Trudeau told the House years later, that after:

> ... the events of October, 1970, when there had been terrorism, murder and kidnapping, we directed the RCMP — and I believe this was the will of the House — to pay a little more attention to internal subversion caused by ideological sources in Canada and not only concentrate on externally sponsored types of subversion.
>
> It then became obvious that one of the groups they were going to look at was one composed of those who were trying to break this country, separate it, and who had been using force in order to do it. There was a great deal of indignation on the part of members opposite, and indeed many people across the country, because at the time of the October, 1970, events the police had to throw a very wide net indeed and arrest many people who were apparently guilty of nothing because the Police were misinformed. They did not have inside information on the terrorists, those who had kidnapped Mr. Cross and Mr. Laporte. So obviously we told them — we did not have to tell them because they would have done it by themselves — to concentrate a little more on this threat. So I suppose that as a result of that they began infiltrating the FLQ and they began trying to get more information on those who would destroy the country by force, whether they be in Quebec or in other parts of the country.[67]

Parliament was not informed of these improved security activities, and did not debate them, nor were questions asked about them.

Parliament and Changes in Security Organization

In April, 1973, Mr. Cossitt of the Conservatives charged that the government, "without the knowledge and without the consent of the people of Canada through their elected representatives in this House, has subverted the RCMP, which has been the incorruptible symbol of Canada throughout the world", and "that there is the possibility that the government has been creating, unannounced and behind the scenes, some monstrous form of political police snoopery that is a threat to the democratic principles of this country."[68] Former Prime Minister Diefenbaker and Mr. Robert Coates supported Mr. Cossitt. If the allegations of these Conservatives were to be believed, the government had changed its mind and, without seeking Parliament's approval, was creating a civilian security service whose intelligence activities would be a threat to civil rights, democratic processes, and the RCMP.

The issue had been brewing in Parliament for nearly two years, since the summer of 1971, when a CTV programme leaked the creation of a new civilian group involved with security in the Solicitor General's Department. Newspapers, in that slack season, had picked up the story and expressed alarm. When Parliament reconvened, there were many questions on the new group.[69] Mr. McCleave, a respected member of the Conservative party, raised the issue on adjournment, where he pointed out that "Canadians are justifiably proud of the world's finest police force, the Royal Canadian Mounted Police. Anything that touches upon that force or that seems to affect it in any way is a natural cause for alarm ...." He was worried that the government had now created "a body that some in the Mounted Police ... feel constitutes an infringement upon themselves," and asked the Solicitor General: "First, will the group in fact advise the minister on the operations of the RCMP and possible changes in that world famous force? Second, will this new group be given a formal legislative structure so that all in Parliament will have an appropriate opportunity of dealing with its creation?"[70] Mr. Goyer, the Solicitor General, in response regretted that discussion had emerged from a leak in his department, said that the principles stated by Mr. Trudeau on the tabling of the Mackenzie Commission Report were still in effect, and that the new group was concerned mainly with research, planning and analysis. There was no question of the group directing police operations as such.[71]

The opposition, unsatisfied by this response, continued to pursue the issue. Mr. Goyer, on September 21, made a statement to the House, in which he described the functions of the new Security Planning and Research Group as:

> 1. To study the nature, origin and causes of subversive and revolutionary action; its objectives and techniques as well as measures necessary to protect Canadians from internal threats;
>
> 2. To compile and analyze information collected on subversive and revolutionary groups and their activities, to estimate the nature and scope of internal threats to Canadians, and to plan for measures to counter these threats;
>
> 3. To advise me on these matters.[72]

The Group had no operational duties, which would remain with the RCMP. It was intended simply to advise the minister, and through him the cabinet, on "the aim and intentions of groups that are genuinely revolutionary and prepared to employ violence in achieving their ends, as distinct from those who would promote social change through accepted democratic procedures." He emphasized that "the government must be enabled to act rather than to react to these groups." In conclusion, Mr. Goyer quoted with approval Mr. Stanfield's remarks on the Mackenzie Commission Report, on the need for "ministers, elective and responsible members of the government to whom the entire security operation is an open book .... None of us would want to see a security operation in this country running under its own steam and answerable only to itself — a government, so to speak, within the government."[73]

Mr. Woolliams, for the Conservatives, regretted that the House had not been told about security policies, and recommended that the whole question of security matters be referred to a special committee of the House and Senate which could, if necessary, meet *in camera*. He was mistrustful of the government's intentions. In contrast, Mr. Brewin for the NDP welcomed the creation of the group. He noted that in his experience "such matters as security require, for their proper evaluation, an extensive political knowledge and sound judgment. These qualities do not, as we have learned in the past, always exist in those who are trained as policemen. I entirely agree that civilian control in such delicate matters is essential. What is required is the ability to distinguish between radical proposals, new and dangerous thoughts which are entirely healthy and, indeed, essential to a dynamic society on the one hand, and activities directly related to violence against the state or against the individual on the other."[74] He hoped that the Minister would regularly report, so that Parliament could ensure that the organization did not blossom out into something large and sinister. Mr. Beaudoin for the Creditistes concluded that the setting up of the group showed the failure of the government to handle the root problems of the economy.

In December, Parliament learned that the Group had been authorized positions for eight officers, three stenographers, and one clerk. Colonel Bourne had been seconded from National Defence to head the Group.[75] These answers failed to reassure the concerned Conservatives, and Mr. Diefenbaker, Mr. Cossitt, Mr. Woolliams and Mr. Neilsen continued to pursue the issue, suspecting an attempt to supplant the RCMP. The government gave some information in response, but was obviously irritated by the continuing charges, as the following interchange shows:

> *Right Hon. J. G. Diefenbaker (Prince Albert)*: Mr. Speaker, my question is directed to the Solicitor General. It arises out of the long overdue answer given today to the question I asked regarding the special planning and research group attached to the Solicitor General's department. Can he say how often this group meets and whether it makes reports to him from time to time concerning threats to the internal security of this country?
>
> [*Translation*]
>
> *Hon. Jean-Pierre Goyer (Solicitor General)*: Mr. Speaker, I assume that, being good civil servants, they meet from nine o'clock in the morning until five o'clock in the afternoon, that they do their job according to their terms of reference as approved by the Treasury Board. Also, being good civil servants, once their assignment has been duly completed, they report to the deputy minister who, in turn, reports to the minister. I do not find anything strange or mysterious about that.[76]

Mr. Diefenbaker, in a supplementary, fruitlessly pursued an assertion which Mr. Goyer had made in the Justice and Legal Affairs Committee that Canada had faced an even more serious threat from the FLQ in the fall of 1971 than in 1970.[77]

During the 1972-4 minority Parliament, the Conservatives continued to pursue the question. Even though they had been briefed at open and *in camera* meetings of the Justice and Legal Affairs Committee on the renamed "Police

and Security Planning and Analysis Group",[78] they were not satisfied that it was performing a useful function or was free from the possibility of becoming a political police. The government responded to questions, giving some details of budgets and functions, but fears were not allayed. The Conservatives, without changing their minds, gradually lost interest in the topic after the 1974 election, which restored the Liberal majority.

Apart from the legislation on wiretapping, this pursuit of the Police and Security Planning and Analysis Group was the most extensive discussion of security matters during the period. Parliament did not distinguish itself. Even a little reflection would have shown that a group of eleven (or twenty, as it later became) persons in a staff position in the Solicitor General's head office was unlikely to be a threat to the security branch of the RCMP, which must by then have numbered over 1,000, and was part of the large, strong national police organization. The likelihood of the Group replacing the RCMP was negligible, and the attention paid to this a diversion after a red herring.

At the same time, thoughtful reflection would have suggested that there were other, more serious, problems in security matters. The government had stated its intention to be able to anticipate and avert terrorist acts. Parliament might have wondered what the implications of this were: how big the security service would need to be; what surveillance and infiltration of groups was needed in order to distinguish justifiable targets from legitimate activities; and what threats to civil liberties lay in these expanded security programmes. Extended activities would likely bring the security service to unlawful actions, or ones of doubtful propriety. Perhaps the Mackenzie Commission's recommendation of a civilian service, so that the integrity of the RCMP would not be threatened, needed to be reconsidered. Parliament might also have wondered what possible useful influence a group of ten or twenty could have over an RCMP numbering in the tens of thousands. If the purpose of the group were to ensure that the security service did not become a government within a government, as Mr. Goyer had implied, Parliament might have wondered if it had adequate resources for the task. Parliament could have questioned the ability of the Solicitor General to control and direct security matters. The Department's function was to deal with police matters, criminal investigations, detention, penitentiaries, parole, pardons and internal security. This is a narrow range of activities. The government had rejected the Mackenzie Commission's recommendation to establish a civilian security agency separate from the RCMP and a large professional security secretariat in the Privy Council Office to formulate and implement security policies, and had not created the Security Review Board. The range of advice the Solicitor General would receive on security from his department was obviously extremely limited, and a small advisory group was not going to do much to expand it. The tools by which the Solicitor General could discover, evaluate, and alter the security activities of the RCMP were not impressive.

These questions were not raised in the House, which is perhaps not surprising, for in the minority Parliament, the energy crisis, inflation and the economy were all more important political issues. What is surprising,

however, is that nowhere in the extended net of communications, analysis, and argument which influences discussion in Parliament, were these questions being raised. The government was beefing up security activities in a way that would inevitably lead to intervention in the activities of private groups. Parliament and the public had, at least tangentially, been alerted to this intensification. No academics, and no journalists, had however twigged to the problems. The secrecy surrounding security matters, and attendant ignorance, handicapped perception of the problems,[79] but it remains a testimonial to Canada's political innocence that the fundamental issues were ignored.

Parliament and the Surveillance of Separatist Activities

The Mackenzie Commission, it will be recalled, stated that "separatism in Quebec, if it commits no illegalities and appears to seek its ends by legal and democratic means, must be regarded as a political movement, to be dealt with in a political rather than a security context."[80] The government must, however, take adequate steps to inform itself of subversive or seditious activities, or of foreign influence which might be threats to the integrity of the federation. Thus, inevitably the security services had to keep some sort of watch over separatist activities, if only to be able to assess the threat, to distinguish between legitimate and improper activities, and to be able to target likely subversives or terrorists.

A particular problem existed in recruitment of persons for positions in government, and especially in National Defence. The Commission felt these should be treated differently. For the public service generally:

> The problem of separatists is ... contentious, and we suggest that the security policy concerning separatism should be made clear. We can see no objection to the federal government taking (and being seen to take) steps to prevent its infiltration by persons who are clearly committed to the dissolution of Canada, and who are involved with elements of the separatist movement in which seditious activity or foreign involvement are factors. We feel that information concerning membership in or association with extreme separatist groups should be reported on the same basis as information concerning other allegedly subversive movements, and that the departmental decision process should be similar. We are, of course, aware that there is a wide spectrum of activity relating to separatism, ranging from overt political activity to clandestine terrorist planning and action, and we do not for a moment suggest that all persons who have been associated with overt and non-violent groups should be excluded from federal employment. We see no reason, however, why the federal government should employ (especially in sensitive areas) persons who appear to be actively committed to an extreme separatist position. At the very least we feel that a decision to employ such persons should be taken only on the basis of a knowledge of their records.[81]

For the armed services, however, the Commission felt there should be a much tougher policy: 'Persons currently engaged in separatist activities should not be permitted to join the armed forces, and should be released if they are found to be members of the armed forces."[82]

Threats to civil liberties lurk in all of these statements. First, there is the general threat implied by any surveillance of political activities. Secondly, there is the threat involved in surveillance of individuals who are, or might be, involved in separatist activities. Thirdly, there is the possible restriction of opportunities for employment in the civil service to those belonging to or associated with "extreme" separatist groups. For the armed services, the ban is comprehensive, excluding anyone "engaged in separatist activities". With the emergence of the Parti Quebecois as a political force, the interpretation of these injunctions became acute. For example, is voting for, financially supporting, or becoming a member of the P.Q. "engaging in separatist activity"? If any of them is, then according to the Commission there are grounds for dismissal from the Armed Services. Also a large proportion of the population of Quebec could be classified as potentially subversive. A security service could use this as a justification for determining who are members of the P.Q., and who supports them in other ways. If some factions within the P.Q., or overlapping between the P.Q. and other organizations, are "extreme", while others are "moderate", the need for close surveillance of a legitimate political party appears even more obvious. Intensified intelligence activity made all these problems more urgent.

Important though these issues were, they were not debated by Parliament. But surveillance of separatists did receive a curious sort of coverage.

In 1971, the Minister of National Defence was asked about members of the Parti Quebecois in the armed services. He responded that in his opinion it was "impossible for a separatist to take the oath of the Armed Forces and at the same time to be a separatist."[83] The problem of surveillance of legitimate political parties was not pursued, nor was the problem of how the P.Q. members or other separatists in the armed service were going to be identified. Discussion languished until, in early May, 1976, a confidential letter from General M. R. Dare, the Director General of the RCMP Security Service, to Mr. Robin Bourne, as chairman of the Security Advisory Committee of the Privy Council, was leaked by an anonymous source to the *Toronto Sun*, a right-wing and pro-RCMP newspaper. The letter stated that the Prime Minister had issued guidelines restricting security service inquiries with regard to the Parti Quebecois, and that the service did not have a mandate to investigate separatist activities unless they were involved with violence or terrorism. Consequently, the security service would not be able to give advice relative to separatist sympathies, associations and activities. General Dare was seeking advice from the Security Advisory Committee. The *Sun* was outraged that due to direct interference from Prime Minister Trudeau, the RCMP had ceased security screening of separatists in the federal public service.[84]

Mr. Erik Neilsen of the Conservatives, raised the question in the House. The Prime Minister replied that he was distressed that such a letter existed and was in the hands of the public, that the letter contained at least two inaccuracies, and that the issue was going to be referred to a cabinet committee.[85] Mr. Neilson further wondered whether this altered the policy previously stated by the Prime Minister that "there are no orders, no theory and no practice under which the police must ask my permission to talk to any minister, any

member of the House of Commons, or any member of the Canadian public."[86] Mr. Trudeau replied no, that the police operated under ministers and a government responsible to Parliament, and that the government had reached conclusions on the issue, which had been communicated to the police. Mr. Clark, the Leader of the Opposition, raised the question the following day, and Mr. Allmand, the Solicitor General, told him that what was in question was a cabinet decision on the operations of the Security Service which had been conveyed to the RCMP, confirming "that the RCMP should not survey legitimate political parties per se, but of course individuals in all political parties should be subject to surveillance if they are suspect with regard to criminal activities, subversion, violence, or anything like that."[87] General Dare had been wondering whether this general policy also applied to security screening of applicants for the public service. Mr. Hnatyshyn of the Conservatives, wondered whether the independence of the RCMP was being infringed by these controls.[88]

Over the next few days, the Prime Minister expressed his distress that such a letter would be leaked in a way that was intended to destroy his reputation and credibility;[89] the offices of the *Sun* were searched for the letter by the RCMP; Mr. Trudeau said he did "not mind admitting that I was one of those who would argue that a democratic political party should not be under systematic surveillance by the RCMP"; and that one of the errors in General Dare's letter was the inference "that because the party is not under surveillance the government does not want to have security clearance on everyone who occupies a sensitive position in the federal government."[90] The Conservatives (Mr. Neilsen and Mr. MacKay in particular) continued to pursue the questions of the relationships between the Prime Minister, the Security Service, and the Solicitor General's office.

During these interchanges, the opposition was extraordinarily selective in their inquiries. The government clearly stated that the cabinet had considered whether the Security Service should investigate legitimate separatist parties, and had decided no. Cabinet does not usually make decisions like that in the abstract, but the opposition at no time asked what circumstances had led to the decision. The opposition also showed no concern for the civil rights of members of the P.Q., or of potential recruits to the public service, but were concerned that the RCMP should not be unduly restricted by the government.

Not until the following year, when the APLQ break-in became an issue, did Parliament return to the question of surveillance of separatist activities. By this time the opposition changed its stance and expressed some concern for the civil rights of subjects of surveillance. Further details on the surveillance of the Parti Quebecois did not emerge through opposition questioning or through leaks, however. The government itself disclosed the details. Mr. Francis Fox, then Solicitor General, used the occasion of the Throne Speech Debate to tell the House that he had referred to the McDonald Commission alleged offences committed in 1973, involving a break-in by the security services into private premises in Montreal, and the theft of computer tapes listing members of the Parti Québecois, and financial information.[91] One explanation that emerged

for this break-in was that the RCMP was investigating a tip from the Privy Council Office that foreign sources were financing the P.Q. The details of the next steps taken, and of the extent of prior and subsequent knowledge of the break-in, have not yet been revealed. Mr. Fox, in his same October, 1977, speech, told the House that in March, 1975, the cabinet had defined the mandate of the Security Service, and the description he gave of the mandate excluded the surveillance of legitimate political parties.[92] This was the decision referred to by Mr. Trudeau on 11 May, 1976. The information gathered from the break-in was destroyed after the 1975 decision. Mr. Fox's speech was preceded by remarks from a western Conservative on the abandonment by the CPR of the Kettle Valley line. The Conservative member who followed complained that he did not have advance notice of Mr. Fox's remarks, and made a rambling, antagonistic reply. On later days there were questions in the House, but the problem became lost in other security issues. As has later been shown, the mandate described by Mr. Fox was taken very seriously by both government and security services, and deserved more attention than it received.

As in its handling of the changes in organization, Parliament did not distinguish itself in considering the problems of surveillance of separatist activities. At no time were the real issues discussed. The subject was first raised by leaks that appear to have been intended to embarrass the government and lend support to the RCMP. The opposition showed little understanding of the problems, and the government, on its part, revealed only a little at a very late date. There was no control or direction by Parliament.

IV. Conclusions and Recommendations

A pessimistic conclusion is that Parliament has not controlled security activity. The record shows that parliamentary discussion is spotty and partial, with some issues being flogged to death, while others have been ignored. Debate, questions and committee consideration have usually concentrated on a few, and often unimportant aspects of the problems. On changes in security organizations, and the implications of General Dare's letter, for example, the opposition chased after straw men and failed to uncover the real and disturbing issues. There has never been a full debate on security matters, and the government has never publicly informed Parliament of the policies, programmes and activities of the security branch.

On the other hand, there are grounds for less pessimistic conclusions. Canadian security activities have been reasonably effective. We do not live in a police state, and still enjoy many more civil liberties than most nations. Parliament has shown a consistent concern for the civil rights aspects of security matters, and since 1965 has been instrumental in stimulating the creation of four royal commissions which have examined both specific cases and general security issues in great depth. Sometimes it is not adequately appreciated that parliamentary control, like any other effective system of control, is not a question of accounting for every individual administrative act and exercise of discretion, but an examination of the general processes, the rules, the exceptions and the important cases. Hence, although Parliament has concentrated on only a few issues, parliamentary discussion has stimulated the executive, on whom the responsibility appropriately lies, to conduct thorough examinations, and to general improvement of its security policies and activities. Parliament has been far from ineffective as a watchdog, as is amply demonstrated by many instances from the extreme sensitivity of Mackenzie King to parliamentary criticism in 1946, to the creation of the McDonald Commission in 1977.

Nevertheless, the present system has serious weaknesses. There have been excesses of zeal and authority on the part of the Security Service. The mass media and Parliament have often shown little confidence in and support for security activities, which has not helped to build the support and consent desirable for good government. Parliament and the public, for their part, have not had the assurance that security activities have been properly limited and controlled.

The prime cause of these problems is that Parliament and the public have not had an adequate information and knowledge base on which to base discussion. In particular, secrecy remains an obstacle to effective parliamentary control. It is obvious that Parliament by itself cannot uncover secrets if the government is determined to keep them. Neither questions nor debates will

produce more information than the government is prepared to release. *In camera* committee meetings, or consultation between leaders of the opposition parties and the government (these are discussed in more detail below) can provide more information, but neither mechanism will uncover secrets the government wants to keep, or information known to the Security Service but of which the government is not aware. At the same time, experience suggests that many secrets are going to leak out sometime. In the broad context of political discussion, the media especially have been useful and important in uncovering issues that Parliament has afterwards pursued. Leaks often have not destroyed the effectiveness of security operations, but have helped lead to the right questions being asked, and to better control. It is difficult to avoid the conclusion that more has been kept secret than needs to be, or is healthy.

The MacKenzie Commission considered these problems. On the one hand it emphasized that decisions in the security area "ultimately relate to the defence of the state, for which the government and only the government is responsible. Such decisions should not be surrendered to any group outside the executive."[1] On the other hand they were convinced that "effective security arrangements must have a firm basis in public awareness and understanding, that the level of parliamentary and public debate on these subjects would be considerably improved if more information were made available, and that a good deal of information could in fact be made available without detriment to the public interest."[2] The subsequent years have not shown dedication by the government to improving the level of discussion.

For parliamentary and public discussion and control to be improved, more information must be made available. It needs to be provided on a regular basis, and it must, in some form, be disseminated beyond the confines of an *in camera* committee briefing, so that the wider public can understand and participate in discussion. The following sections will examine some mechanisms for achieving these goals. The examination is based on the assumption that the legal framework for security activities is one of 'hunting and fishing licences' giving the government a limited power to exercise discretion, and that ultimately the government should account for its use of discretionary authority.

These proposals for change will not solve the problems of the dilemma between the concern for the safety of the state and the possible harming of civil liberties, or between the need for open discussion and the need for secrecy. What they do is to shift the balance in favour of more parliamentary control and less government secrecy. Canadian experience has shown that the present balance errs too much in the other direction. Ideally, perhaps, the problems could be resolved through a synthesis which provided one fundamental value and a clear, consistent, and unambiguous technique for choosing between independence or control, publicity or secrecy. But as in most interesting areas of political argument, in controlling security matters a choice, and not always a happy one, has to be made between competing values. There is no final answer.

Better Use of Committees

The practice of briefing the Justice and Legal Affairs Committee, and the External Affairs and National Defence Committee, on security activities is a worthwhile beginning. More needs to be done, however, to ensure that information does not stop at the *in camera* briefings, but can contribute to wider discussion. To this end, the Canadian Parliament should adopt the British practice of publishing the proceedings of *in camera* investigations, with a minimum of necessary "sidelining" or deletion in the interests of security. Only with publication of a verbatim transcript can Parliament as a whole, and the public, make use of information or, equally important, have the assurance that the committees are doing an effective job on their behalf.

If Parliament wants to make a more intensive investigation than is possible in the large standing committees, two techniques are available: a subcommittee can be struck; or Parliament can create a new committee, such as the committee on members' rights and immunities, or the one proposed to consider emergency measures legislation. The smaller committee is better able to make a detailed investigation. It also permits a careful selection of members, and reduces the confusion caused by frequent changes in membership. Both new committees mentioned above were "special" committees created to do a job, and disappearing when the task is completed. The Justice and Legal Affairs Committee, on the other hand, is a standing committee that continues from session to session.

A recent study in Britain[3] suggested a committee of the House, "meeting when necessary in secret, composed exclusively of Privy Councillors empowered to question both the responsible ministers and Security Officers on the whole range of their policy and activities — to report annually to Parliament in a form which can be published." Membership would be restricted to Privy Councillors because they have all taken an oath of loyalty and confidentiality. This has more attraction in Britain than in Canada, because British governments change more frequently than Canadian, and British members of Parliament tend to retain their seats for much longer time spans than Canadian. Both these factors mean that there is a substantial resource of Privy Councillors outside the Ministry on each side of the House, from which a committee could be selected. There are normally too few opposition Privy Councillors in Canada to make this proposal workable, although a committee of Privy Councillors including some from outside Parliament might be a reasonable alternative. This committee could report to the Governor-in-Council, with statutory provision that the Government table the report in the House. Or a senior opposition member of the committee could table the report.

It is not recommended that a new standing committee on security be established. There are already too many committees, and they demand too much of members' time and energy. Security falls already within the ambit of the Justice and Legal Affairs, and the External Affairs and National Defence, committees.

It must be recognized that better use of committees, however helpful, is not a panacea. The committees will be questioning ministers or servants of the crown answering on behalf of ministers. Neither will disclose information which the government is not prepared to reveal. It is possible, however, that a committee of Privy Councillors might overcome this difficulty.

Reports by Ministers

A necessary base for improved discussion is a more adequate disclosure of security activities and policies by the government. This could be done in several ways. The Solicitor General could table in Parliament an annual report on security. This could then be referred to the Justice and Legal Affairs Committee to form the subject of investigation. The Minister could use the Throne Speech Debate to give Parliament a description of security activities. An annual presentation to the Justice and Legal Affairs Committee could fulfill the same function. In Britain recently, adjournment debates (which are longer there than in Canada) have been used to inform Parliament on security matters.[4] The very short reports which the Solicitor General now gives annually on electronic surveillance in security matters do not adequately inform Parliament. Especially if a 'hunting and fishing licence' form of control is established for more activities than wiretapping will Parliament need to be more adequately informed of the exercise of discretion. Review will for the most part probably need to be in secret, and would probably best be conducted by parliamentary committee.

A Security Commission or Review Board

The Mackenzie Commission considered how Parliament and the public could be reassured that the Security Service was not immune from responsible scrutiny apart from that of the government.[5] They rejected a parliamentary committee because of the problem of security clearance (see below) and proposed instead a Security Review Board independent of any government department or agency. Here only one aspect of this sort of independent board or commission will be considered: the effect on parliamentary control.

The Security Review Board proposed by the Mackenzie Commission had a mixture of functions. It was to receive annual or semi-annual reports from the head of the security service, on which it would in turn comment to the Prime Minister,[6] and it was an appeal board which could make advisory decisions on protests over individuals' rights in security clearance. This mixture would not have produced control problems because the Board was not to report to Parliament but to the government. Doubtless its proceedings were to be in private and confidential, and thus to the extent that the government could defend a security decision by claiming that the Board had reviewed and approved the decision, public and parliamentary review and discussion would have been prevented.

A Security Review Board or Commission which reported to Parliament might be considered. It might, for example, have only an audit and reporting responsibility, reporting to Parliament much as does the Auditor General. A committee might review its report, much as the Public Accounts Committee reviews the report of the Auditor General. While this is attractive in theory, in practice it would likely create insurmountable problems. As was noted earlier, there is some confusion at present whether the Public Accounts Committee is holding the minister or the civil servant responsible. The kind of detail the Public Accounts Committee must consider is not usually the sort that is important to ministers. The Commission on Financial Management and Accountability might well recommend that the civil servant be held accountable. In security matters, the minister must clearly be accountable, all the more so if he exercises discretion through providing written authorization for unusual activities. Perhaps, providing that the legal framework was adequate, ministers would permit an external review board to probe these sensitive issues in sufficient detail to ensure that the provisions of the law and the written authorizations had been met by the security service. It is unlikely, however, that much of the important information could be made public. A parliamentary committee might then examine a report from the review board.

If the independent review board had executive authority, even to the limited extent of reviewing and recommending on appeals, it is very likely that, like legislative auditors in Canada when they had executive power, the board would adopt the practice of ensuring disputes were resolved before reporting to Parliament. It would then only report that everything is all right, and would become an obstacle to, rather than an encouragement to, parliamentary investigation. The ultimate responsibility for security activities should remain that of the appropriate minister to Parliament, regardless of the position of the review board.

Parliament and the Report of the McDonald Commission

The work of a Commission of inquiry ends when it reports, and implementation is out of its hands. Much can go wrong in implementation. The report of the Spence Commission was so much of a political hot potato that it was ignored by Parliament. The report of the Mackenzie Commission did not arouse enough political interest to be adequately debated. The report of the McDonald Commission, if it is to be thoroughly discussed, must avoid both these pitfalls. It is probably easier to do so in 1977 than in 1966 because the improved committees can investigate issues more thoroughly than before, and because there is generally less antagonism between the two front benches. However, if the Commission is seriously concerned that its report stimulate parliamentary and public discussion, some attention should be paid to the process by which discussion can be fostered. This would be especially important if the Commission's report included proposals for legislation, such as changes to the Official Secrets Act, or new emergency measures legislation.

It would also be important if the Commission were to propose enhanced techniques of parliamentary control. It is suggested that the steps in the process might be as follows:

(a) *tabling of the Commission's reports by the government.*

(b) *referral of the Report and draft legislation, to the Justice and Legal Affairs Committee.* The motion of referral would provide an opportunity for all members of Parliament to enter into a general debate on the report.

(c) *consideration of the Report by the Justice and Legal Affairs Committee.* The Committee could meet in open or *in camera*, as the particular topic dictates. The Justice and Legal Affairs Committee could strike a sub-committee of senior members to consider particularly sensitive areas. If the Justice and Legal Affairs Committee found that some security matters were so sensitive that even *in camera* sessions or a sub-committee could not investigate them adequately, then it should so report. The House and the Government could then consider establishing a small special committee, of eight senior members such as the Committee on Members' Rights and Immunities, or a small joint House-Senate Committee such as the one proposed to consider emergency measures legislation in 1971. With responsible selection of members, a committee of this sort should be as trustworthy as a royal commission.

(d) *debate in the House on the Report of the Committee.* Consideration of the Committee's report would provide a second opportunity for a general debate.

(e) *consideration of new legislation by the House and Senate.* The Government would remain responsible for submitting new legislation to the House. It could then be considered in the normal manner, with the advantage that the previous discussions should encourage agreement and reduce the time taken.

Consultations Between Leaders of the Opposition Parties and the Government

Although Parliament might look from the outside like a field of war for irreconcilably opposing parties, in fact a lot of the business of Parliament is accomplished with consent between sides, and many friendships and other formal and informal relationships link members of different parties. Not the least of these links is the process of private discussion and consultation between the government and leaders of the opposition parties. This section will examine the record of these consultations on security matters in Canada, and then assess their usefulness as part of parliamentary control.

In May, 1940, as the news of the progress of the Second World War became increasingly grave, Prime Minister Mackenzie King and several of his ministers met with Hanson, the leader of the Conservatives, and several other Privy Councillors in the Conservative party, to give them secret information

about the war situation. King also met with Conservative Privy Councillors in the Senate, and the leaders of the CCF (forerunners of the NDP) and Social Credit Party. Not the least of his hopes was that these meetings "might help to silence the agitation for National Government".[7] This was a vain hope, but the Prime Minister continued his wily manoeuvering until, in July, he was able to record:

> Have succeeded in getting entire opposition just where I want them. Blackmore said he or his party would not joint a government that did not have Social Credit as the basis of its war finance. Coldwell came out openly that the party was a socialist party. Would not join any other. Hanson said he was elected to oppose the government. Intended along with his party to do so. That places all three by their own declaration against national government, meaning thereby union government. All three have declined even to help share in responsibility by the indirect means of either consultation, advice or to the extent of obtaining information confidentially in the war effort of the government. That leaves the Liberal Party wholly and absolutely responsible of itself and dependent on its majority from now on. ... To have established this in Parliament itself within the first couple of months of its meeting is a great achievement.[8]

There were, of course, further consultations during the war, but the pattern had been set. At this gravest emergency in Canada's history, partisan considerations were far from absent in the Prime Minister's mind as he consulted with Opposition leaders, and the end result, to his satisfaction, was a domination by his party over the others.

In 1948, at a tense period of the Cold War, Mackenzie King, still Prime Minister, once again consulted with leaders of the Opposition parties:

> After talking with St. Laurent, Pearson and Claxton, I felt I should tell the leaders of the three main parties — read to them what was in a statement of the background of the situation in Europe — not tell them more than that. I could not read the other messages, but I would like them to know they were very grave. I would some day let them see them. Could not do so now.[9]

The Prime Minister told the cabinet the purpose of these consultations was so the Opposition leaders "should know the situation and share responsibility, especially as the behaviour in Parliament might have a serious bearing on what a little later would have to be considered."[10] The strong paternalistic note in this diary entry shows the continuing dominance of the Liberal Party. The entry also shows that consultations can often be far from open and comprehensive. The Government can present the material it chooses, and the Opposition has no way of checking the accuracy or adequacy of the secret material disclosed.

In 1964, when Prime Minister Pearson learned of the Munsinger case from the RCMP, he wrote to Diefenbaker, as a Privy Councillor and former Prime Minister, saying that he was "greatly disturbed by the lack of attention which, insofar as the file indicates, this matter received." Pearson said he must ask the RCMP to make further enquiries. He recognized "that the file before me may not disclose all the steps that were taken. In view of this, it is my duty to write to you about the matter in case you might be in a position to let me

know that the enquiries that were pursued and the safeguards that were taken reached further than the material before me would indicate. That material now indicates that the Minister of Justice brought the matter to your attention, and that no action was taken."[11] Mr. Diefenbaker saw Pearson in his office a week later and told him that he had interviewed Sevigny, "had satisfied himself that no security had been violated".[12] Diefenbaker claims that "basically the Prime Minister's letter was an attempt to blackmail Her Majesty's Loyal Opposition into silence on the scandals rocking his government."[13] Peter Newman reports that:

> On February 24 (1966), Guy Favreau, then President of the Privy Council, called Davie Fulton to his parliamentary office for a private talk. The two men were unusually close for members of opposing parties. At the Couchiching Conference the previous summer they had greeted each other with such effusive warmth that a bystander remarked: "That's the Fulton-Favreau formula in action." Now, Favreau issued a warning to his friend that if the Conservatives persisted in their demands for a judicial inquiry into the Spencer case, the Liberals would be forced to disclose the details of a scandal involving Conservatives. Fulton later quoted Favreau as saying: "If you keep fighting the Spencer case, things will probably blow up and we'll have to mention the Munsinger Affair."[14]

Whatever else this episode tells us about politics, it does show that consultations need not be carried on in an atmosphere of trust and good will, nor need they necessarily improve parliamentary control.

When Prime Minister Pearson agreed to establish the Mackenzie Commission, he told the House that "In working out the terms of reference of an inquiry of this kind dealing with national security and security procedures, perhaps it would be desirable for a representative of the government to consult with representatives of other parties to see whether agreement could be reached on the terms of reference to cover this wider question."[15] Quite likely this happened, for, unlike the Spence Inquiry into the Munsinger affair, there was no disagreement over the final terms of reference of the Commission. When the question of publishing the report was discussed, Mr. Diefenbaker asked to see the unabridged report: "No former Prime Minister should be in the position of having only a selective or abridged report on matters connected with security during his period of administration."[16] The public record does not indicate whether this request was granted or denied. Mr. Stanfield, the new Leader of the Conservatives, was, according to Mr. Trudeau: "offered ... the opportunity to read it under his oath as a Privy Councillor and, for reasons which I respect, he preferred not to read it."[17] The reasons were not specified.

Mr. Pearson, then retired, noted that Mr. Trudeau consulted with him when he was considering invoking the War Measures Act:

> He believed that this move was justified in the grave situation that had to be faced. During the day he had consulted Diefenbaker and Douglas, Caouette and Stanfield. He found Diefenbaker and Douglas understanding, but Stanfield more hesitant and non-committal. I told him that I was glad to be informed and I certainly appreciated the difficulties and dangers of the situation. He had my complete sympathy and understanding. I thought the governments in Ottawa and Quebec had handled things admirably. I felt that

> Parliament's reactions to the War Measures Act would be very important. If it backed the Government on a non-partisan basis, that would have a strong and stabilizing effect on public opinion everywhere. If, however, there was bitter debate and division, then the effect would be bad and the government's position more difficult. In any event, the earliest possible Parliamentary action on the initiative of the government was important.
>
> I warned the P.M. that he mustn't assume from a private talk that either Douglas or Diefenbaker would support him publicly. I had learned from bitter experience that such private talks usually meant little when a Parliamentary debate began, and how easy it was to be deceived by them. An Opposition leader could always plead that his colleagues in the Party could override any personal views he might have.[18]

Pearson's caution proved justified with Mr. Douglas and the NDP. Obviously there are good grounds for the government as well as the opposition to be cautious about private consultations.

Prime Minister Trudeau told the opposition party leaders of his intention to invoke the War Measures Act a few hours before he did so. This was more informing than consulting. He later discussed with the other party leaders the Public Order (Temporary Measures) Act which replaced the War Measures Act. The Social Credit Party was particularly scathing of these consultations for being a sham, and this contributed to their hostility towards the proposal to set up a committee to consider emergency measures legislation.[19] Mr. Stanfield and Mr. Trudeau also exchanged correspondence on replacing the War Measures Act.[20]

During a discussion of RCMP training methods in 1972, Mr. Otto Lang, then Minister of Justice, told the House that "In the ordinary course the Leader of the Opposition is briefed on security matters. ... I would be glad to discuss in full details with the leaders of the opposition parties the training material to which I have referred."[21] Mr. Stanfield replied:

> I will, of course, take up the minister's proposal to discuss this matter with him. But I want to make it very clear that I will do so on the basis that I do not tie my own hands with regard to information that may come from other sources.
>
> The Minister also made the statement that in the ordinary course of events the Leader of the Opposition is briefed on security matters. I do not want anybody to get the impression from this that I have been briefed on this or, indeed, on any other matter relating to espionage since I have been Leader of the Opposition.[22]

Consultations between the government and opposition party leaders were raised in 1977 during a heated exchange on ministerial responsibility for security activities. Mr. Trudeau, while explaining the process of meetings and discussions, and after being badgered during question period for nearly an hour, said that:

> There was a whole series of meetings, the purpose of which was to receive from the security service information and to convey to it in general terms the desires of the cabinet of the day and its general directions, so that the police in a sense could be controlled and told what areas they should be more particularly concerned about. This whole area is, once again, where we are con-

stantly faced with the dilemma of how far a security service must go while, at the same time, respecting the rights of the individual and ensuring the security of the state. It is a dilemma that any police force faces. I see that the Leader of the Opposition is shaking his head. I am sure he could face the dilemma with a great deal of ease.

Mr. Clark: I am incredulous.

Mr. Trudeau: I have invited him, as I invited his predecessor, if he wants to be a party to these security briefings, to be party to them. I have written to that effect, and I wrote to his predecessor in office to that effect.

Mr. Clark: Not to those briefings.

Mr. Baker (Grenville-Carleton): That is a distortion; you have not.

Mr. Clark: I am sure you would want to set the record straight.

Mr. Lawrence: You surely do need help.

Some hon. Members: Oh, oh!

Mr. Trudeau: The record is quite straight. I wrote to the Leader of the Opposition telling him that if he wanted to be party to security briefings by our security service, we would very gladly arrange such briefings.

Some hon. Members: Hear, hear![23]

If Mr. Trudeau were correct, it would be a remarkable example of generosity on the part of a government: allowing the leader of the opposition to sit with a cabinet committee during their meetings with the security service. Mr. Clark rose a few minutes later:

Mr. Speaker, I rise on a question of privilege simply to allow the Prime Minister the opportunity to correct a false impression which he gave, I am sure most inadvertently. He had been referring to regular briefings on the security committee of the Privy Council, of which he is the chairman, by the security services to the government of Canada. He had referred quite explicitly to those briefings, and he said in reference to the offer that he had made to me that I had been invited to take part in those briefings. I am sure the Prime Minister will agree that it is not the nature of the offer that was extended to me as Leader of the Opposition.

I will quote from his letter, which reads in part:

"Perhaps it is appropriate at this time — "

Mr. Speaker, I emphasize "at this time". This letter was received in my office on October 18.

"— to extend an invitation to you, as Leader of the Opposition, to attend a briefing that could be arranged at your convenience."

Some hon. Members: Oh, oh!

Mr. Clark: There is a difference between a briefing and regular briefings. There is also a very clear difference, which this Prime Minister appears unwilling to accept, between briefings and responsibility, including the responsibility to ask questions about methods and potential illegalities.

Right Hon. P. E. Trudeau (Prime Minister): Mr. Speaker, the paragraph read by the Leader of the Opposition referred to practices in the United Kingdom and other countries, where a practice has been developed of briefing the opposition from time to time on matters relating to national security. It was, I agree, only on October 18 that I made it quite clear that I had made the same offer to the previous leader of the opposition, as I am sure Mr. Pearson had made it to Mr. Diefenbaker, and probably Mr. Diefenbaker to Mr. Pearson.

The Leader of the Opposition has not yet had time to decide whether he wants such briefings or not. He has certainly not answered my letter, but he has told us today — he was probably too busy travelling.

Mr. Clark: I will reply before 18 months, Prime Minister.

Mr. Trudeau: He told us today, with great emphasis, that he did not consider it sufficient to attend "a" briefing. That is his emphasis. If he wants more than "a" briefing; if he wants some briefings, if he wants them in different form than have traditionally been accorded the Leader of the Opposition, let him say so and let him answer my letter. Let him tell us what kind of briefings he wants, and we will see if they can be given.

An hon. Member: Oh, sit down; don't waste time.

Mr. Trudeau: I can tell the Leader of the Opposition that if he thinks that in those briefings he will be able to ask members how they get information, who they get it from, and in which way, he will not get that information unless the law of the country is changed and the practices of time immemorial in this House are changed.[24]

The interchange suggests that any briefings which might have taken place would not have been in an atmosphere of trust or non-partisanship, nor would they have answered the questions which the opposition had raised about specific incidents of alleged improper action by the Security Service.

A few days later, Mr. Clark compared British practice, where there "is a regular practice of briefing members of the opposition", with Canada, where he had "received a one-time offer from the Prime Minister to have one briefing on some aspects of security matters. That was in response to letters that I wrote. There is no system in place, and there never has been."[25] The Solicitor General retorted that:

> The Prime Minister also offered to the Leader of the Opposition briefings on the state of security in this country. However, the procedure in the Standing Committee on Justice and Legal Affairs provided an opportunity to members from both sides of the House to raise questions about the general application of security policy. I am, of course, always amazed to see the questions asked by members of the Standing Committee on Justice and Legal Affairs, particularly on the police and security side, administered by the Solicitor General, come back up in the House without reference to the fact that questions have been asked systematically by people in this organization and very detailed answers have been furnished in the past, as they will be this year if it is the wish of the parliamentary committee to so examine the estimates of my department in connection with the police and security analysis group.[26]

His amazement was rhetorical. All politicians know that *in camera* briefings, when the record is not published, have the advantage to the government, and the disadvantage to the opposition, that they do not provide for the possibility of publicity that is essential to parliamentary control. Mr. Clark did not accept the government's offer. In the circumstances it is difficult to see how he could have done otherwise.

In conclusion, consultations between the government and opposition party leaders have a mixed history in Canada. They have sometimes been a useful means of informing the opposition on security matters, and of encouraging support in Parliament, but they have serious weaknesses. The government will reveal no more than it chooses, which might be only a small part of the story, nor can it reveal what it does not know: whether, for example, it is being misled by the Security Service. The ability of the opposition to evaluate

and criticize confidential information received in private is seriously limited. For these reasons, the opposition has been justifiably mistrustful of consultations. The government, likewise, cannot be certain that opposition parties will abide by the intentions expressed by their leaders in private, nor can they be assured that issues discussed in private will not be raised afresh in public. With these inherent difficulties, consultations, although they have their uses, cannot be more than a small part of the processes of parliamentary control over security activities. More consultation would be especially worthwhile during the long periods when there are no apparent problems with the security service, and security activities are not newsworthy.

The Question of Security Clearance for M.P.'s

The Mackenzie Commission, in examining the problem of providing external scrutiny over security activities, considered the mechanism of a parliamentary committee. They rejected it, however, "partly because we think that the legislature should not be directly involved in these executive matters, and partly because, if the committee were to carry out its tasks in a meaningful way, its members would need formal security clearance. On general grounds we think it is inappropriate to subject private members of Parliament to these procedures, and in addition we foresee great complications if a member nominated by a political party were ever deemed unacceptable on security grounds."[27] The Committee offered no further explanation for this very negative conclusion. This section will examine the issues further, asking first why it was considered "inappropriate" that members should be subjected to security clearance and if the objections are still valid, and secondly, whether there are alternatives to security clearance for ensuring that members can be trusted with secret information.

The inappropriateness of security clearance for M.P.'s is a product of its implications for the relationship between Parliament and the executive. A fundamental constitutional theory is the supremacy of Parliament. In practice the government normally controls Parliament more than Parliament controls the government, but it is Parliament, not the government, which makes laws, and it is in the high court of Parliament that the government is called to account for its use of funds and authority granted by Parliament. If private members of Parliament on a committee were subjected to a security check before the committee could examine security matters, it must follow that the government or the House acting on the advice of the service could veto a member as being a security risk. This in turn means a control by the government, and indirectly by the security service, over Parliament's freedom to choose whom it appoints to committees. This possibility of detailed control over the House is the major objectionable aspect of subjecting M.P.'s to security clearance. It is one thing for the government on the grounds of national security to refuse to answer questions, or to release information to a committee, but it is quite another for the government or the Security Service to decide formally that some private members are acceptable, while others are not. The former is a standard and traditional part of the relationships between Parliament and

the executive; the latter is an unprecedented interference and control over Parliament's freedom to carry on its affairs. Few members of Parliament would find this acceptable.

Some difficult constitutional issues would be raised by this sort of security clearance. Much of the history of the evolution of responsible cabinet government is contained in the efforts of Parliament to assert its independence from the executive, and its right to regulate its own proceedings is now unchallenged. Security clearance could infringe on this right. Parliamentary privilege covers the publication, use, and restrictions on use, of the proceedings of Parliament and its committees, and of documents tabled in Parliament or released to its committees. The British Parliament has asserted its independence of government in determining privilege. It has also resolved "that no Court of Justice has jurisdiction to discuss or decide any question of parliamentary privilege which arises before it, directly or indirectly", and further has resolved "that the vote of the House of Commons declaring its privilege is binding upon all Courts of Justice in which the question may arise."[28] Parliament would likely argue that a requirement for clearance of M.P.'s by a security service is an unacceptable intrusion into parliamentary privilege.

There are further complications. With the rapid turnover on most committees, a large number of members would have to be subjected to security clearance if a standing committee such as Justice and Legal Affairs were considering secret matters. Over the life of a session, this could be more than sixty persons. Also, if a Committee were considering secret matters and some members had clearance and some did not, the members with clearance might have access to information, while the others did not. This would prevent the committee from working effectively.

The advantage of security clearance is that with it the executive and security service would likely feel more free to impart information to members or a committee. The extent to which security clearance, by itself, would encourage the executive to confide is, however, doubtful, for Parliament and its committees would still be engaged in a partisan struggle as well as in a scrutiny of the executive.

The possible role of committees in security matters has been examined earlier; here, the next question to consider is whether there is an alternative to security clearance.

This question has been considered by the British Parliament, and the conclusion was reached that parliamentary privilege rather than "positive vetting" through security clearance was the appropriate safeguard. In 1967-8, the Select Committee on Science and Technology of the British House of Commons investigated some defence research establishments, in particular one engaged into research in biological warfare. The Committee considered security clearance for its members, but because of the constitutional issues decided to rely for security on parliamentary privilege.[29] At no stage did the Ministry of Defence suggest security clearance.[30] The Committee only received information up to and including the security classification of "confidential", and

although it was aware that there were higher classifications, it did "not necessarily wish to know information which is vital to national security."[31] Each member of the Committee received a full transcript of every *in camera* hearing, but before publishing them the Committee would receive suggestions from the ministry for "side-lining" or deleting confidential information. The ministry's recommendations were always accepted by the Committee.

A problem arose when Mr. Tam Dalyell, a Labour and government backbencher, showed the unedited transcript of proceedings to a journalist, who then wrote an article based on this information which was published in the *Observer*. This was construed as a breach of privilege, and was studied by the Committee of Privileges. The Committee unanimously found Mr. Dalyell guilty of a breach of privilege, and of "gross contempt of the House" (analogous to contempt of court). After a lengthy debate on the report, the House also, on division, found Mr. Dalyell guilty, and he was ordered "to attend in his place", uncovered, standing, while the Speaker, sitting in his chair, covered, called him by name and reprimanded him.[32] The journalist and the editor of the *Observer* were found guilty of the same offences, but no sanction was imposed on them.

In fact the article in the *Observer*, although it had breached parliamentary privilege, had not breached security. The reporter had checked to see whether his story offended any "D" notice (a government notice to newspapers and the media requesting authoritatively that subjects not be discussed) and it had not.[33]

The sanction imposed on Mr. Dalyell of a reprimand by the Speaker might appear to be light, but in the context of Parliament and its mores it is severe. If serious breaches of privilege were caused by motives more blameworthy than Mr. Dalyell's error in judgment, Parliament, the highest court in the land, could impose harsher penalties, including certainly imprisonment, and possibly fines as well. The Canadian Parliament, and provincial legislatures, have imprisoned people for breaches of privilege. There are, however, difficult problems both in the enforcement of privilege and in the assurance of a fair trial in the parliamentary procedures for breaches of privilege and contempt of Parliament.[34]

Opposition to the reprimanding of Mr. Dalyell came from the left wing of the Labour Party, which was strongly opposed to biological warfare, and felt that there was a moral issue involved which justified releasing the information. One senior Labour member recognized that public interest could override duty to the House, although he did not think that was the issue in this case.[35] But regardless of its importance in this case, the emergence of the overriding public interest factor does raise the question of whether Parliament is particularly susceptible to breaches of confidence. An argument supporting this conclusion is that two of the basic forces in Parliament are publicity and party competition, and that these forces make Parliament a very leaky vessel indeed for keeping confidences.[36] On the other hand, the record in Canada of leaks of confidential information, including security matters, shows that Parliament is not alone in being a leaky vessel, and that civil servants, politicians and others

can also be sources of leaks. The advent of easy photo-copying has made leaking documents relatively easy. This in no way justifies leaks, and as was pointed out earlier, publicity by leaks is extremely susceptible to bias and manipulation. It can be wondered whether Parliament is any more liable to breaches of confidence than other large organizations. Obviously some members of Parliament are less responsible in this matter than others, as are some members of the RCMP or the Privy Council Office. And it can be further wondered whether security clearance of M.P.'s by a Security Service would be a better guarantee of trustworthiness than careful selection of responsible M.P.'s by Parliament. Security clearance itself is a far from perfect procedure.

Footnotes

DEFINITION OF THE ISSUES

1. Canadian Official Secrets Act (R.S.C. 1952, C.198), 3.1. The use of the word "State" in this statute and its British antecedent is curious, as the word has little place in English law: "The Crown's servants and advisors in Parliament assembled are known to the law. But the State, on the face of it, seems to be missing." Geoffrey Marshall, *Constitutional Theory* (Oxford: Clarendon Press, 1971), p.15.

2. A good description of thinking on reason of state can be found in: C. J. Friedrich, *Constitutional Reason of State: The Survival of the Constitutional Order* (Providence, R.I.: Brown University Press, 1957).

3. *Report of the Royal Commission on Security (Abridged)*, (Ottawa: Queen's Printer, 1969). (Hereafter referred to as the *Mackenzie Commission Report)*, p.21.

4. Colonel A. J. V. Durell, C.B., *The Principles and Practice of the System of Control over Parliamentary Grants* (London: Hogg, 1917), p.6.

5. Quoted in Friedrich, op. cit., pp. 82-3.

6. John Locke, *Second Treatise on Civil Government*, XVIII, 202.

7. Hon. R. Basford, Minister of Justice, H.C. Debates, Vol. 1, p. 823, Nov. 14, 1977. Superintendent Cobb, in defending his activities in preparing and distributing a false communique, was reported as saying "he feels now that even though he could be charged he doubts that he would be convicted because he was acting to serve a greater public good — protecting society against terrorists." *The Globe and Mail*, July 19, 1978.

8. *Report*, p.3.

9. *The Mackenzie Commission Report*, p.8.

10. Ibid.

11. Hannah Arendt, "Reflections on Violence," *Journal of International Affairs*, Vol. 23, No. 1 (1969).

12. Vallières, in his first book, *White Niggers of America* (Toronto: McClelland and Stewart, 1971), espoused the philosophy of violence of Franz Fanon. In his second, *Choose* (Toronto: New Press, 1972), he advocated the peaceful approach through the Parti Quebecois for achieving independence. The RCMP, in Operation Minerve, prepared false documents purporting to be from the FLQ, disavowing Vallières' move to the peaceful option. This attempt to keep the violence-oriented groups from joining the P.Q. was an action of dubious wisdom in the opinion of this author.

13. *Statutes of Canada*, 1973-4 (21-22 Elizabeth II) C50.

14. Op. cit., 6:3.

15. See Hannah Arendt, op. cit., for a discussion of some of these issues.

16. See, for example, J. Glenn Gray, "Understanding Violence Philosophically," in *On Understanding Violence Philosophically and Other Essays* (New York: Harper, 1970). Both Gray and Arendt emphasize the importance of making a distinction between force and violence.

THE ROLE OF PARLIAMENT

1. The best recent discussion of these problems is contained in: John Stewart, *The Canadian House of Commons: Procedure and Reform* (Montreal: McGill-Queen's University Press, 1977), especially Chpts. VIII, "Doing the Government's Business", and IX, "Closure and Time Allotment". See also C.E.S. Franks, "Reform of Procedure in the House of Commons", a paper delivered at the Conference on the Legislative Process, The University of Victoria, April, 1978. The issues in time-tabling centre around the "closure" and "guillotine" devices, which are government controls over the House. The most recent proposals for reform, which have not been adopted because of problems in getting the parties to agree, can be found in: House of Commons, Standing Committee on Procedure and Organization, *Minutes*, 30 Sept., 1976, 20: 57-61.

2. H.C. Debates, Vol. 8, p. 7834, September 15, 1971.

3. *Statutes of Canada*, 1973-4 (21-22 Elizabeth II) C50.

4. This process is documented in Alistair Fraser, "Practical Steps in the Legislative Process", IV Symposium of the Inter-Parliamentary Union, *Proceedings*, Geneva, 30 Jan., 1976.

5. Judy Torrance, "The Response of Canadian Governments to Violence," *Canadian Journal of Political Science*, Vol. X, No. 3 (Sept. 77), p.481. The five incidents referred to are: The Red River rising of 1869-70; the Northwest rebellion of 1885; the Quebec City riots of 1918; the Winnipeg general strike of 1919; and the Regina riot of 1935.

6. Ibid., p. 495.

7. J. R. Mallory, "The Two Clerks: Parliamentary Discussion of the Role of the Privy Council Office," *Canadian Journal of Political Science*, Vol. X, No. 1 (March, 1977), pp. 18-19.

PARLIAMENT AS A WATCHDOG

8. A general discussion of accountability to Parliament can be found in: Canadian Study of Parliament Group, *Seminar on Accountability to Parliament, 7 April, 1978* (Ottawa: House of Commons, 1978). A good discussion on ministerial responsibility in particular can be found in Geoffrey K. Fry, "Thoughts on the Present State of the Convention of Ministerial Responsibility", *Parliamentary Affairs*, Vol. XXIII, No. 1 (Winter 1969/70).

9. H.C. Debates, Vol. 2, p. 2241, March 4, 1966.

10. Ibid.

11. See J. R. Mallory, op. cit., pp. 8 and 12. Mallory quotes Prime Minister Trudeau as saying that a Prime Minister has not been forced to appear before a standing committee within the past twenty-five years. H.C. Debates, Vol. 6, p. 6007, May 22, 1975. Prime Minister R.B. Bennett, of his own volition appeared before the Railway Committee on May 13, 1932.

12. See C. E. S. Franks, "The Saskatchewan Public Accounts Committee," *Canadian Public Administration*, IX, 3 (Sept. 1966), 348-366, and also Norman Ward, *The Public Purse: A Study in Canadian Democracy* (Toronto: University of Toronto Press, 1964).

13. This issue is reasonably well covered in the *Seminar on Accountability to Parliament*. See especially pp. 14 and 24-5.

14. Ibid., p. 22.

15. Quoted in S. E. Finer, *The Man on Horseback*, 2d ed. (London: Penguin, 1975), pp. 22-3.

16. Cf. Superintendent Cobb's comments, fn. 7. These issues in the American context are well dealt with in Mortimer R. Kadish and Sanford H. Kadish, *Discretion to Disobey: A Study of Lawful Departures from Legal Rules* (Stanford: Stanford University Press, 1943). They are examined in the British context in Geoffrey Marshall, *Constitutional Theory*, Chpt. IX, "The Right to Disobey the Law: Civil Disobedience".

17. H.C. Debates, Vol. 7, pp. 6845-51, especially p. 6851, June 20, 1977 and Vol. 1, pp. 1027-9, November 18, 1977.

18. Ibid., pp. 2510-1; 2517-23, February 3, 1978, and pp. 2551-2567, February 6, 1978.

19. Ibid., pp. 1856-67, December 6, 1978; pp. 1892-1925, December 7, 1978.

20. This problem is particularly important in consultations between the Prime Minister and leaders of the opposition parties on security matters, which is discussed below, pp. 130-9.

21. H.C. Debates, Vol. 1, pp. 393-5, October 28, 1977.

22. Ibid., pp. 395-8.

23. Standing Committee on Procedure and Organization, *Minutes*, November 20, 1975, 9:10.

QUESTION PERIOD

24. See Great Britain, H.C. Debates, May 9, 1956, Col. 1220-22; March 1, 1961, Col. 1579-80, August 11, 1966, Col. 1879-80.

25. H.C. Debates, Vol. 1, pp. 510-11, October 23, 1970.

26. Ibid., Vol. 1, p. 215, October 16, 1970.

27. Ibid., Vol. 1, p. 547, October 26, 1970; pp. 653-4, October 25, 1970, Vol. 6, p. 5736, May 12, 1971.

28. Ibid., Vol. 8, p. 8557, October 27, 1975; p. 8657, October 29, 1975; p. 8689, October 30, 1975.

29. Ibid., Vol. 4, p. 3833, March 10, 1977, Vol. 6, p. 6217, June 2, 1977; p. 3289, February 28, 1978; p. 4159, April 5, 1978.

30. Ibid., Vol. 12, pp. 12316-7, March 31, 1976.

31. Ibid., Vol. 12, pp. 12399 and 12401, April 2, 1976.

32. Ibid., Vol. 12, p. 12951, April 28, 1976; Vol. 13, p. 13613, May 18, 1976; p. 14071, June 2, 1976; Vol. 14, p. 14266, June 8, 1976; p. 15007, July 5, 1976; Vol. 6, pp. 5924-28, 58-60, May 25, 1977.

33. Ibid., Vol. 6, p. 5959, May 26, 1977; pp. 6005 and 6007-9, May 27, 1977; pp. 6039-40, May 30, 1977; pp. 6207-9, June 2, 1977; Vol. 7, pp. 6375 and 6367-8, June 7, 1977; pp. 6423-4, June 8, 1977; pp. 6465-6; June 9, 1977, p. 6527, June 10, 1977; p. 6575, June 13, 1977; p. 6733, June 16, 1977.

34. Ibid., pp. 6734-7, June 16, 1977.

35. Ibid., Vol. 7, p. 6793, June 17, 1977.

36. Ibid., Vol. 7, p. 6910, June 21, 1977.

37. Ibid., Vol. 7, pp. 6986-6990, p. 6992, June 22, 1977.

38. Ibid., Vol. 8, p. 7365, July 6, 1977.

39. Ibid., pp. 3472-6, March 6, 1978; p. 3520, March 7, 1978, p. 3570, March 8, 1978; p. 3619, March 9, 1978.

40. Ibid., Vol. 1, pp. 419-20, June 18, 1973; Vol. 8, pp. 8461-4, December 6, 1973.

41. Standing Committee on Fisheries and Foresty, *Third Report*, in *Minutes*, April 25, 1978, 19: 3-11.

42. Robin Bourne, "Violence and Political Authority", Dunning Trust Lecture, Queen's University, November 1, 1976, p. 19.

43. H.C. Debates, Vol. 5, p. 4450, March 25, 1975.

44. Standing Committee on Justice and Legal Affairs, *Minutes*, 29-11-1977; 3: 97.

45. See, for example, the discussion of *in camera* meetings in: Canadian Study of Parliament Group, *Seminar on Accountability to Parliament*, especially pages 2:19, 25, 40-41.

PARLIAMENT AND THE MACKENZIE COMMISSION

1. J.W. Pickersgill and D.F. Forster (eds.), *The Mackenzie King Record*, Vol. 3 (1945-1946), (Toronto: University of Toronto Press, 1970), p. 11.

2. Ibid., p. 142.

3. Ibid., p. 134.

4. Ibid., p. 147.

5. Ibid., p. 151.

6. *Montreal Gazette*, Feb. 16, 1946, p. 1.

7. H.C. Debates, Vol. 1, pp. 136-140, March 21, 1946.

8. Ibid., Vol. 1, p. 78, February 3, 1947.

9. Op. cit., p. 158.

10. Ibid., p. 282.

11. The lead-up to the establishment of the Commission is summarized in John Saywell, ed., *Canadian Annual Review for 1966* (Toronto: University of Toronto Press, 1967). Good descriptions of the affair can also be found in: Peter Stursberg, *Diefenbaker: Leadership Lost, 1962-67* (Toronto: University of Toronto Press, 1976), Chpt. IX, "The Munsinger Case"; Lester B. Pearson, *Memoirs*, Vol. 3 (Toronto: The University of Toronto Press, 1975), pp. 173-185; and Peter C. Newman, *The Distemper of our Times: Canadian Politics in Transition, 1963-1968* (Toronto: McClelland and Stewart, 1968), Chpt. XXVIII, "The Munsinger Affair". The Munsinger issue is not mentioned in *Diefenbaker's One Canada: The Years of Achievement*, 1957-1962 (Toronto: Macmillan, 1976).

12. H.C. Debates, Vol. 2, p. 1885, February 28, 1966.

13. Ibid., Vol. 2, pp. 1877-84, February 28, 1966.

14. Ibid., Vol. 2, pp. 1884-6, February 28, 1966.

15. Ibid., Vol. 2, p. 2211, March 4, 1966.

16. Ibid., Vol. 2, pp. 2227-2231, March 4, 1966.

17. Ibid., Vol. 2, p. 2243, March 4, 1966.

18. Ibid., Vol. 3, pp. 2293-4, March 7, 1966.

19. Ibid., Vol. 3, pp. 2297, March 7, 1966.

PARLIAMENT AND THE SURVEILLANCE OF SEPARATISTS

20. Ibid., Vol. 9, p. 9949, November 16, 1966.

21. Pearson, op. cit., pp. 182-3.

22. Stursberg, op. cit., p. 146.

23. H.C. Debates, Vol. 3, p. 2613, March 14, 1966.

24. Newman, op. cit., p. 401.

25. *Memoirs*, vol. III, p. 183.

26. Oct. 6, p. 11.

27. Sept. 24, p. 6.

28. Quoted in Newman, op. cit., p. 406.

29. H.C. Debates, Vol. 2, pp. 2206-7, March 4, 1966.

30. *Memoirs*, Vol. III, pp. 169-173. This concern was manifest in Pearson's earlier statement on security matters: Vol. 4, H.C. Debates, Vol. 4, pp. 4043-5, October 25, 1963.

31. Ibid, Vol. 10, p. 10638, June 26, 1969.

32. Ibid., p. 10639.

33. Ibid, pp. 10639-40.

34. Ibid., p. 10640.

35. Ibid., Vol. 2, pp. 1625-6, December 4, 1969.

36. Ibid., Vol. 6, p. 5636, April 8, 1970.

37. Ibid., Vol. 1, p. 1011, November 9, 1970.

38. Ibid., Vol. 1, p. 1041, November 10, 1970.

39. Ibid., Vol. 2, p. 2007, December 14, 1970.

40. Ibid., Vol. 5, p. 5222, April 26, 1971 and p. 5527, May 5, 1971.

41. Ibid., Vol. 8, pp. 7533-4, September 15, 1971; Vol 1, p. 359, February 29, 1972.

42. Ibid., Vol. 8, pp. 8118-9, October 14, 1975.

43. See: John Saywell, *Quebec '70: A Documentary Narrative* (Toronto: University of Toronto Press, 1971); Ron Haggart and Aubrey E. Golden, *Rumours of War* (Toronto: New Press, 1971); Gerard Pelletier, *The October Crisis* (Toronto: McClelland and Stewart, 1971); and Denis Smith, *Bleeding Hearts ... Bleeding Country: Canada and the Quebec Crisis* (Edmonton: Hurtig, 1971)

44. H.C. Debates, Vol. 1, p. 13, October 9, 1970.

45. Ibid., Vol. 1, pp. 196-7, October 16, 1970.

46. Ibid., Vol. 1, p. 109, October 14, 1970.

47. Ibid., Vol. 1, pp. 335-6, October 19, 1970.

48. Saywell, *Quebec '70*, p. 94.

49. Ibid., pp. 107-8.

50. H.C. Debates, Vol. 1, pp. 194-5, October 16, 1970.

51. Ibid., p. 215.

52. Ibid., p. 224.

53. Ibid., pp. 510-11, October 23, 1970.

54. Ibid., p. 547, October 26, 1970.

55. Ibid., p. 654, October 28, 1970.

56. See, for example, Haggart and Golden, op. cit., Chapter XIV, "A Choice of Weapons".

57. Carl Von Clausewitz, *On War* (Anatol Rapoport, ed.) (Penguin: 1968), pp. 162-3.

58. Saywell, op. cit., pp. 79-84.

59. H.C. Debates, Vol. 6, p. 5778, May 13, 1971.

60. Ibid., Vol. 5, p. 4594, March 25, 1971.

61. Ibid., Vol. 6, p. 5736, May 12, 1971.

62. Ibid., p. 5785, May 13, 1971.

63. Ibid., p. 5800.

64. Ibid., Vol. 8, p. 8657, October 29, 1975.

65. Ibid., Vol. 8, p. 8557, October 27, 1975; p. 8657, October 29, 1975; p. 8689, October 30, 1975; p. 3289, February 28, 1978; p. 4156 and 4159, April 5, 1978.

66. Ibid., Vol. 1, p. 685, October 29, 1970.

67. Ibid., Vol. 1, p. 564, November 2, 1977.

68. Ibid., Vol. 3, p. 3048, April 6, 1973.

69. Ibid., Vol. 7, pp. 7546 and 7553, September 7, 1971; pp. 7624-25, September 8, 1971.

70. Ibid., pp. 7698-9, September 9, 1971.

71. Ibid.

72. Ibid., Vol. 8, p. 8026, September 21, 1971.

73. Ibid., p. 8027.

74. Ibid., p. 8028.

75. Ibid., Vol. 10, pp. 10114-5, December 2, 1971.

76. Ibid., Vol. 2, pp. 1767-8, May 1, 1972.

77. See, Justice and Legal Affairs Committee, *Evidence*, April 25, 1972, 3:15.

78. H.C. Debates, Vol. 5, pp. 5090-1, June 26, 1973.

79. Ibid., Vol. 5, p. 5423, May 3, 1971.

80. *Report*, p. 8.

81. Ibid., pp. 36-7.

82. Ibid., p. 114.

83. H.C. Debates, Vol. 5, p. 4595, March 25, 1971.

84. *Toronto Sun*, May 5, 1976, p. 1.

85. H.C. Debates, Vol. 13, p. 13192, May 5, 1976.

86. Ibid., Vol. 9, p. 9501, November 27, 1975.

87. Ibid., Vol. 13, p. 13224, May 6, 1976.

88. Ibid., p. 13225.

89. Ibid., p. 13278, May 9, 1976.

90. Ibid., p. 13389, May 11, 1976.

91. Ibid., Vol. 1, p. 395, October 28, 1977.

92. Ibid., p. 399.

CONCLUSIONS

1. *Report*, p. 39.

2. Ibid., p. 4.

3. Rt. Hon. Tony Benn, "Civil Liberties and the Security Services: The Case for an Enquiry", (unpublished, 1978).

4. See Great Britain, H.C. Deb., 5 May, 1977, col. 804-816; 24 May, 1978, Col. 1709-1720. Each was approximately thirty minutes long.

5. *Report*, pp. 23-4.

6. This proposal was not accepted by the Trudeau Government.

CONSULTATIONS

7. J. W. Pickersgill, *Mackenzie King Record*, Vol. I, 1939-1944 (Toronto: University of Toronto Press, 1960), p. 82.

8. Quoted in J. L. Granatstein, *Canada's War: The Politics of the Mackenzie King Government, 1939-1945* (Toronto: Oxford University Press, 1975), pp. 105-6.

9. J. W. Pickersgill and D. F. Forster, *Mackenzie King Record*, Vol. IV, 1947-1948 (Toronto: University of Toronto Press, 1970), p. 167.

10. Ibid., p. 168.

11. L. B. Pearson, Mike: *The Memoirs of the Right Honourable Lester B. Pearson*, Vol. III, 1957-1968 (Toronto: University of Toronto Press, 1975), p. 181.

12. Ibid.

13. J. G. Diefenbaker, *One Canada: The Tumultuous Years. Memoirs*, Vol. III (Toronto: Macmillan, 1977, pp. 268-9).

14. Peter C. Newman, *The Distemper of Our Times: Canadian Politics in Transition: 1963-1968* (Toronto: McClelland and Stewart, 1968), p. 393.

15. H.C. Debates, Vol. 3, p. 2297, March 7, 1966.

16. Ibid., Vol. 3, p. 2295, November 1, 1968.

17. Ibid., Vol. 3, p. 2670, February 29, 1972.

18. Pearson, op. cit., pp. 242-3.

19. H.C. Debates, Vol. 6, p. 5800, May 13, 1971.

20. Standing Committee on Justice and Legal Affairs, *Minutes*, March 9, 1971, 12:15.

21. H.C. Debates, Vol. 2, p. 1202, March 28, 1972.

22. Ibid.

23. Ibid., Vol. 1, p. 567, November 2, 1977.

24. Ibid., pp. 568-9.

25. Ibid., p. 880, November 15, 1977.

26. Ibid., p. 887.

THE QUESTION OF SECURITY CLEARANCE FOR M.P.'s

27. *The Mackenzie Commission Report*, p. 24.

28. Quoted in Sir Ivor Jennings, *The Law and the Constitution*, 5th ed. (London: University of London Press, 1972), p. 113. The standard reference on privilege is: Sir David Liddledale (ed.), *Erskine May's Treatise on the Law, Privileges, Proceedings and Usage of Parliament*, 19th ed. (London: butterworths, 1976), Chpts. V-XI. See especially pp. 79-83 and 146-7.

29. Great Britain, House of Commons, *Second Report From the Committee of Privileges (1967-8), Proceedings*, Q.13. See also Colin Seymour-Ure, "Proposed Reforms of Parliamentary Privilege: An Assessment in the Light of Recent Cases", *Parliamentary Affairs*, Vol. XXIII, No. 3 (Summer, 1970), pp. 221-231.

30. *Procedings*, Q.14.

31. Ibid., Q.22 and 37.

32. See Great Britain, House of Commons *Debates*, Vol. 769, 24 July, 1968, Col. 587-666.

33. A side issue in this case is the question of whether the government can limit the publication of parliamentary discussion through such techniques as "D" notices. It has done this: the famous "announcement" that Britain was building the atomic bomb (H.C. Deb., 12 May, 1948, 450: 2117). As was covered by a "D" notice.

34. See Seymour-Ure, op. cit.

35. H.C. Deb., 769: 618. The Rt. Hon. S. C. Silkin.

36. A dramatic example of all these forces at work can be seen in the Canadian Minister of Justice's blurting out of "Monseignor" (Munsinger) under pressure in the House. H.C. Debates, Vol. 2, p. 2211, March 4, 1966.